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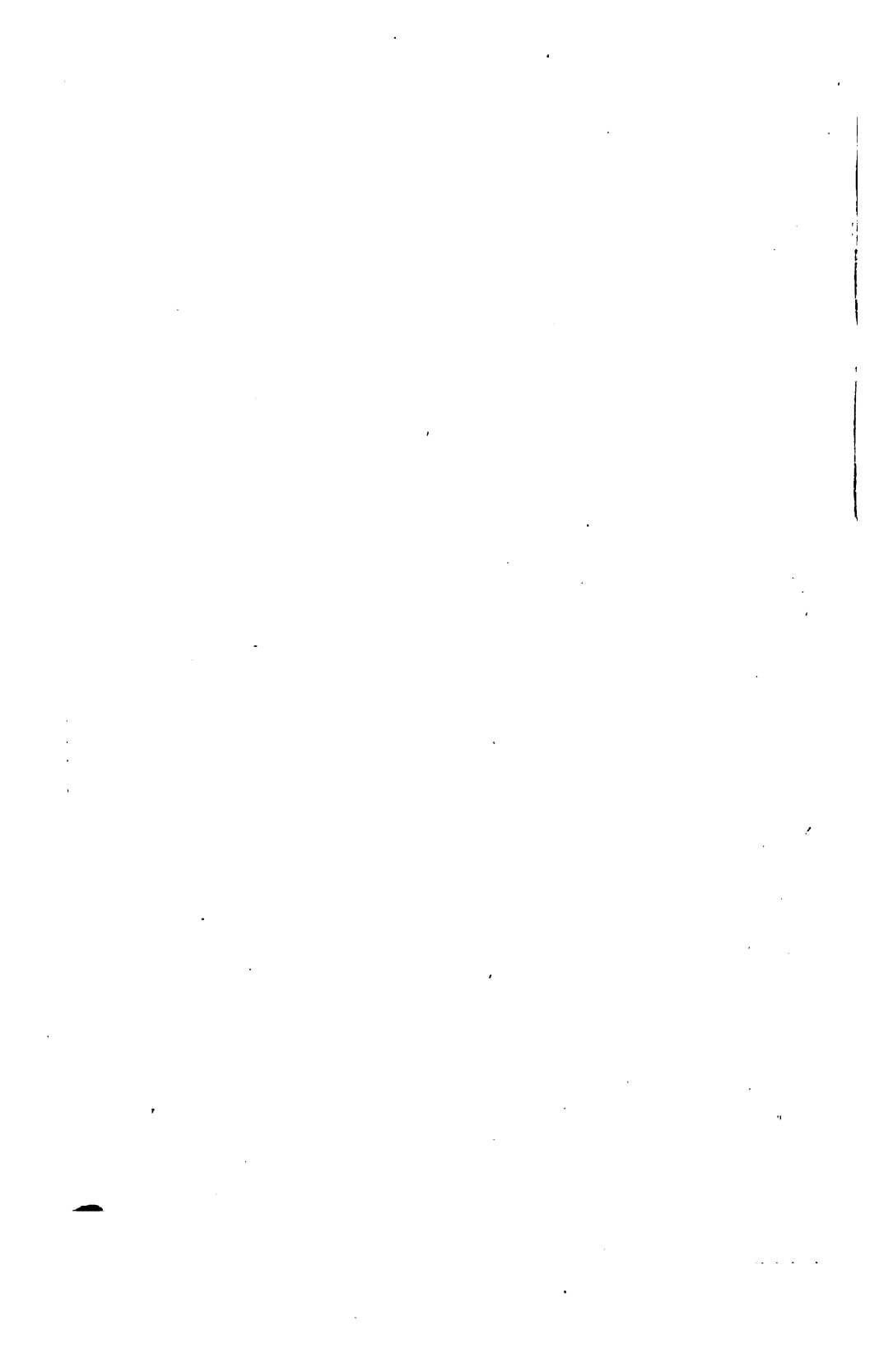
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PREFACE TO THE FIFTH EDITION.

SINCE the Fourth Edition of this little book appeared three very important Acts have been passed—The Companies (Winding-up) Act of 1890, the Companies (Memorandum of Association) Act, 1890, and the Directors' Liability Act, 1890. These Acts and the Companies Winding-up Rules, 1890, have so altered and modified the law relating to Joint Stock Companies as to render it necessary to recast the plan of the book, and this I have done so as to make it embrace these Acts and Rules, and generally to bring it up to date. I think the Companies Winding-up Act and Rules of 1890 of so great importance to all students of this branch of the law, that, little as I like to increase the size of the book, I have printed the Act, Rules, and Forms as an Appendix.

I have in this edition been greatly assisted by my friend, Mr. George F. Hart, Barrister-at-Law, whose advice has helped me on many practical points.

T. EUSTACE SMITH.

12 OLD SQUARE, LINCOLN'S INN,
September 1891.

PREFACE TO THE FIRST EDITION.

As an articled clerk reading for the "Final" examination of the Incorporated Law Society, I felt the need of some small book to give the main principles of the law relating to joint stock companies; more particularly as this important branch of mercantile law lies outside the scope of the text books ordinarily used by students. The text books on Companies are so large, and the Companies Acts themselves so long, that the student cannot gain even the most general knowledge of company law without devoting to it more time than, as a rule, he can safely spare from other subjects. With a view to meet this want, I have prepared the following pages, and have endeavoured in them, as briefly and concisely as possible, to give a general view both of the principles and practice of the law affecting companies.

I also hope that this small work may be of use to the general reader, and for this purpose I have carefully given an authority for every statement I have made, in order that it may not only form an epitome of the Companies Acts, but also a ready Index, showing where fuller information may be obtained on any point—either from the Acts themselves or the larger text books.

T. EUSTACE SMITH.

May 1878.

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A SUMMARY OF THE LAW OF COMPANIES.

CHAPTER I.

OF THE DIFFERENT KINDS OF JOINT STOCK COMPANIES.

COMPANIES as they originally existed were of two kinds only: (1) incorporated, or those which had been formed into corporations; (a) and (2) unincorporated.

Incorporated companies had this great advantage over unincorporated, that while a corporation was considered as a distinct individual, able to sue its own members, and liable to be sued by them, an unincorporated company was considered by the law as an ordinary partnership, and its members, however great its size, were governed by the same rules as partners generally. Another great advantage a corporation had over an unincorporated company was that the property of the corporation, and not that of its members, was liable for its debts.

Advantages of incorporated over unincorporated companies.

(a) Corporations are artificial persons created by the law and endowed by it with the capacity of perpetual succession. They consist of collective bodies of men or of single individuals; the first are called corporations aggregate, the second corporations sole. The existence of corporations is constantly maintained by the succession of new individuals in the place of those who die or are removed. Steph. Com. 7th ed. vol. i. p. 358.

Corporations can be created either by Royal Charter, conferred by letters patent, or by Act of Parliament, and these were originally the only methods by which persons desirous of associating together for purposes of profit could escape the ordinary incidents and liabilities of partnership. As the numbers and importance of companies increased, various Acts of Parliament were passed providing other and less expensive ways for the formation of joint stock companies, but as these, with a few exceptions presently referred to, have been repealed, and new enactments made by the Companies Act, 1862,^(b) as amended by the Companies Acts of 1867, 1877, 1879, 1880, 1883, 1886, and the three Acts of 1890 cited as the Companies Acts, 1862 to 1890,^(c) it is unnecessary to refer to them at length.

A joint stock company has been defined as "an association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each possesses one or more, and which are transferable by the owner."^(d)

Joint stock companies may be divided into two great classes :

- A. Those not formed under the Companies Act, 1862.
- B. Those formed under that Act.

A. The former of these classes may be divided as follows :—

- 1. Cost Book Mining Companies.
- 2. Companies incorporated or privileged by the Crown.

^(b) 25 & 26 Vict. c. 89.

^(c) 30 & 31 Vict. c. 131; 40 & 41 Vict. c. 26; 42 & 43 Vict. c. 76; 43 Vict. c. 19; 46 & 47 Vict. c. 28 & 30; 49 Vict. c. 23; 53 & 54 Vict. c. 62; 53 & 54 Vict. c. 63; 53 & 54 Vict. c. 64.

^(d) Shelford's Joint Stock Companies Acts, p. 1.

3. Companies incorporated by some special Act of Parliament.
4. Banking companies formed under 7 Geo. IV. c. 46.

1. *Cost Book Mining Companies.*

These are companies governed by local custom, and it appears doubtful whether they can be formed for working mines beyond the jurisdiction of the Stannaries. They are mere partnerships, and the members are governed by the general law relating to partners, except so far as that law is expressly excluded by the custom. The company is formed by the agreement together of a number of adventurers who agree to share the risk and expense of working a lode. The mine is managed by an agent called a "Purser," under the control of the shareholders. The terms of the agreement are entered in a book called the "Cost Book"; in this book are also entered all receipts and payments on behalf of the mine, a list of the members, and all transfers of the shares.^(e) The shares are transferable, may be relinquished, and are liable for non-payment of calls.^(f) By a recent Act,^(g) a past member, who has ceased to be a member for two years or upwards before the mine ceased to be worked, or before the date of the winding-up order, is not liable to contribute to the assets of the company. Companies within the jurisdiction of the Stannaries are regulated by the Stannaries Acts of 1869 and 1887.^(h)

A Cost Book mining company may now sue and be sued like any other partnership in the partnership name.⁽ⁱ⁾

According to the custom of Cornwall, an adventurer in a Cost Book mine, upon relinquishing his shares, and

(e) Wharton's Law Lexicon.

(f) Lindley on Company Law, p. 94.

(g) 32 & 33 Vict. c. 19, s. 25.

(h) 32 & 33 Vict. c. 19, and 50 & 51 Vict. c. 43.

(i) *Escott v. Grey*, 47 L. J. 607.

discharging his proportion of the liabilities of the company at that date, is entitled to be paid his share of the then value of the stock and plant, and such share is due to him immediately.^(k) If the company be insolvent he is entitled to retire on paying his share of the deficiency ; if solvent, he is entitled to his share of the assets. In both cases the assets are to be valued on the footing of its being a going concern ; and the solvency of the persons who owe calls and of the continuing shareholders must be taken into consideration. The date of the notice of relinquishment of the shares is the date on which the assets and liabilities are to be ascertained.^(l)

2. *Companies incorporated or privileged by the Crown.*

Companies
incorporated
by the Crown.

First. Companies incorporated by the Crown. The Crown has at common law the power of incorporating by charter any persons desiring to be incorporated, and a chartered company is therefore formed as soon as a charter of incorporation is granted to, and accepted by, two or more individuals.^(m) A company when so formed is not a partnership, and is governed solely by the terms of its charter. Companies are still formed in this way, but it is not much used.⁽ⁿ⁾ It is chiefly useful where special or extraordinary powers are required ; as, for instance, to enrol soldiers, etc.

Charter: how
obtained.

Charters are obtained by petitioning the Queen in Council. The petition and draft of the proposed charter are left at the Council office, and are then referred to the Board of Trade. The Colonial Office, Foreign Office, and India Office are also referred to, if the proposed company

^(k) *In re Prosper United Mining Co., Ex p. Palmer*, 7 Ch. 286.

^(l) *In re Frank Mills Mining Co.*, 23 Ch. D. 52.

^(m) Lindley on Company Law, p. 97.

⁽ⁿ⁾ The Imperial Bank of Persia, the British North Borneo and the British South Africa Company are recent instances of companies so formed. An instance of the winding up of such a company will be found in the case of the Oriental Bank Corporation.

falls within their departments. If it is determined that a charter shall be granted, it issues under the Great Seal.(o)

Secondly. Companies privileged by the Crown. By the 7 Will. IV. & 1 Vict. c. 73, the Crown is empowered to grant by letters patent to any company any privileges which the Crown might at common law grant to any company by any charter of incorporation. A company does not become incorporated by such letters patent. It is required to be formed by an agreement under seal containing certain provisions specified by the Act.(p) The privileges of a company formed in this way depend on the letters patent, and the members are liable for all debts and liabilities, except so far as their liability is limited by the letters patent. Companies may still be privileged by letters patent, but this method appears to have fallen into disuse.(q)

Writs of summons to be served on companies chartered under the 7 Will. IV. & 1 Vict. c. 73, may be personally served on the clerk of the company or be left at the head office, or if the clerk is not found or known, on any agent or officer of the company, or be left at the usual place of abode of such agent or officer.(r)

3. *Companies incorporated by special Act of Parliament.*

A company incorporated under any special Act of Parliament exists as an incorporated company, and is regulated by its special Act alone, but companies incorporated since the 8th of May, 1845, are governed by the Companies Clauses Consolidation Act,(s) save so far as its clauses and provisions are expressly varied or exempted by the company's special Act. Companies are frequently

(o) Lindley, *Company Law*, 5th ed. p. 99.

(p) 7 Will. IV. & 1 Vict. c. 73. s. 5. See also 47 & 48 Vict. c. 56.

(q) Shelford's *Joint Stock Companies Acts*, p. 388.

(r) 7 Will. IV. & 1 Vict. c. 73, s. 26.

(s) 8 & 9 Vict. c. 16, amended by 26 & 27 Vict. c. 118; 32 & 33 Vict. c. 48, 51 & 52 Vict. c. 48; and 52 & 53 Vict. c. 37.

at the present day incorporated by special Act of Parliament and are generally of a public nature, common instances being railway companies.

Writs of summons to be served upon companies incorporated under the Companies Clauses Consolidation Act, 1845, or the Railway Clauses Consolidation Act, 1845, may be sent through the post to the principal office of the company, or to one of the principal offices where there is more than one, or may be given personally to the secretary, or, where there is no secretary, then to one of the directors of the company.(t)

In the case of a company incorporated under the Lands Clauses Consolidation Act, 1845, the writ may be sent through the post to the principal office of the promoters, or to one of the principal offices where there is more than one, or may be given or posted to the secretary, or the solicitors of the promoters where there is no secretary.(u)

4. *Banking Companies formed under 7 Geo. IV. c. 46.*

All banking companies regulated by this Act must have been formed before the year 1844.(x) It is still in force as to companies formed before the 6th of May, 1844, and not registered under the Companies Act, 1862.(y) These companies, although partnerships, possess many privileges which ordinary partnerships do not, the principal of which is the right of suing and being sued in the name of some Public Officer.(z) These privileges were acquired and are retained by sending to

(t) 8 & 9 Vict. c. 16, s. 135; 8 & 9 Vict. c. 20, s. 138.

(u) 8 & 9 Vict. c. 18, s. 134.

(x) 7 & 8 Vict. c. 110.

(y) *Post*, p. 10.

(z) Companies possessing the power to sue and be sued in the name of a public officer are—(1) Cost Book Mining Companies within the jurisdiction of the Stannaries; (2) Companies under 7 Geo. IV. c. 46; (3) Companies formed by Letters Patent under the 7 Will. IV. and 1 Vict. c. 73; (4) Private companies specially possessing this power.

the Stamp Office once a year, between the 28th of February and 25th of March, a return of—(1) The name of the company; (2) The names and addresses of the members; (3) The name of every bank established by it; (4) The names and addresses of two or more persons, members of the co-partnership, resident in England, together with their titles of office, who have been appointed Public Officers of the company; (5) The name of every town and place where any bills or notes are issued. These returns must be verified by the oath of one of the Registered Public Officers. There is nothing in the Act which makes these returns conclusive one way or another.

*B. COMPANIES FORMED UNDER THE COMPANIES ACT,
1862.*

With regard to the second division of joint stock companies—viz., those formed under the Companies Act, 1862—these are by far the most numerous and important, and to them the bulk of these pages will be devoted.

The Companies Act, 1862, provides for the formation of three different kinds of companies, viz.:

1. Companies limited by shares.
2. Companies limited by guarantee.
3. Unlimited companies.

The chief distinction between these three classes of companies is in the liability of the members. Their liability in the first case is limited to the amount unpaid on their shares,^(a) in the second case to the amount which each has undertaken by the memorandum of association to contribute to the assets of the company in the event of its being wound up,^(b) and in the third case the liability of the members is unlimited.^(c) There

(a) The Companies Act, 1862, s. 7. (b) *Ibid.* (c) *Ibid.*, s. 10.

Number of
persons re-
quired to form
a company.

are, however, various other distinctions, which will be noticed further on. The smallest number of persons who can form a company is seven,^(d) and no partnership of more than twenty persons can be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the partnership or by its members, unless it is registered as a company under the Companies Act, 1862, or is formed in pursuance of some other Act of Parliament, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries.^(e) An association of more than twenty persons for the acquisition of gain is an illegal association unless registered under the Companies Act.^(f)

Mutual Marine Insurance Companies,^(g) Loan Societies^(h) and Money Clubs⁽ⁱ⁾ come under sect. 4 of the Companies Act, 1862, and must be registered where their members exceed twenty in number. The section does not apply to companies formed before the commencement of the Act of 1862, even although the original members may have changed.^(k)

Banking
companies.

Banking partnerships in this respect are on a peculiar footing, as they must be registered if the number of partners exceed ten.^(l)

^(d) The Companies Act, 1862, s. 6. Where it carries on business for six months after its members have been reduced below seven, every member cognizant of the fact is personally liable for payment of the whole of the debts of the company contracted during such period, and may be sued for the same without the joinder in the action of any other member. The Companies Act, 1862, s. 48.

^(e) The Companies Act, 1862, s. 4.

^(f) *Sykes v. Beadon*, 11 Ch. D. 170; but see *Smith v. Anderson*, 15 Ch. D. 247.

^(g) *Padstow Total Loss and Collision Assurance Association*, 20 Ch. D. 137.

^(h) *Jennings v. Hammond*, 9 Q. B. D. 225; *Shaw v. Benson*, 11 Q. B. D. 563.

⁽ⁱ⁾ *Ex p. Poppleton*, 14 Q. B. D. 379.

^(k) *Shaw v. Simmons*, 12 Q. B. D. 117.

^(l) The Companies Act, 1862, s. 4.

Companies formed for the purpose of promoting art, science, literature, religion, charity, or any other object not involving the acquisition of gain by the company or by the individual members thereof, were not considered at common law as partnerships, and such a company may, by the licence of the Board of Trade, be registered with limited liability without the addition of the word "limited" to its name,^(m) but cannot, without the sanction of the Board of Trade, hold more than two acres of land; the Board of Trade may, however, by licence under the hand of one of their principal or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.⁽ⁿ⁾

Every limited banking company, and every insurance company, deposit, provident, or benefit society, must, before it commences business, and also on the first Monday in February and the first Monday in August in every year, make a statement of its capital, liabilities, and assets, in a prescribed form, and a copy of such statement must be put up in a conspicuous place in the registered office of the company, and in every branch or place where the business of the company is carried on.^(o)

Any company registered as an unlimited company may register as a limited company.

The registration of an unlimited company as a limited company does not prejudice any debts, liabilities, obligations, or contracts incurred or entered into by the company prior to registration.^(p)

An unlimited company may register as a limited one, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.^(q)

Banking partnerships, as has been before mentioned,

(m) The Companies Act, 1867, s. 23.

(n) The Companies Act, 1862, s. 21.

(p) The Companies Act, 1879, s. 4.

(o) *Ibid.* s. 44.

(q) *Ibid.* s. 10.

Companies formed for charity, &c.

Limited banking companies.

Change of an unlimited company into a limited one.

Notwithstanding any provisions to the contrary in its charter, &c.

Banking companies.

require registration as companies when the number of partners exceeds ten.

No limited liability as regards bank notes.

Any banking company claiming to issue notes in the United Kingdom is not entitled to limited liability in respect of such issue,^(r) and the members are liable for the whole amount of the issue in addition to the sum for which they are liable on their shares or guarantee.

In the event of a banking company being wound up, in case the general assets are insufficient to satisfy the claims of both the noteholders and the general creditors, the members, after satisfying the remaining demands of the noteholders, are liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the noteholders out of the general assets of the company.^(s)

Any bank of issue registered as a limited company can make a statement on its notes to the effect that its limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.^(t)

Audit of accounts of banking company.

Once at least in every year the accounts of every banking company registered as a limited company must be examined by an auditor or auditors, who must be elected annually by the company in general meeting.^(u)

Director or officer cannot be auditor of a banking company.

A director or officer of a banking company is not capable of being elected auditor of such company.^(x) An auditor on quitting office is re-eligible.^(y)

On any casual vacancy in the office of auditor the surviving auditor (if any) may act, but if there is no surviving auditor, the directors must forthwith call an

(r) The Companies Act, 1862, s. 182.

(s) The Companies Act, 1879, s. 6. For the purposes of this section, the expression "The general assets of the company" means the funds available for payment of the general creditors as well as the note-holders.

(t) *Ibid.*

(u) The Companies Act, 1879, s. 7, ss. 1.

(x) *Ibid.* s. 7, ss. 2.

(y) *Ibid.* s. 7, ss. 3.

extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.(2)

The auditor must have a list delivered to him of all books kept by the company, and must also have access to the books and accounts of the company. He may examine the directors or officers of the company in relation to the books and accounts.

Powers of
auditor of
banking
company.

If the banking company has branch banks beyond the limits of Europe, it will be sufficient if the auditor is allowed access to such copies of or extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United kingdom.(a)

The auditor or auditors must make a report to the members on the accounts, and on a balance sheet which must be laid before the company in general meeting. The report must state whether in the opinion of the auditors the balance sheet is a full and fair one, properly drawn up so as to exhibit a true and correct state of the company's affairs as shown by its books. The auditor's report must be read before the company in general meeting. The remuneration of the auditors is fixed by the general meeting appointing them, and is paid by the company.(b)

Report on
accounts of
banking
company.

Balance sheets submitted to general meetings must be signed by the auditor or auditors, by the secretary or manager (if any), and by the directors of the company, or three of such directors at least.(c)

Balance sheets
to be signed by
auditors.

Every life assurance company established after the 9th of August, 1870, and every company commencing to carry on the business of life assurance after that date, must, if it carries on business within the United Kingdom, deposit the sum of £20,000 with the Court of Chancery.(d)

Life assurance
companies.

Deposit to
be made by
life assurance
companies.

(2) The Companies Act, 1879, s. 7, ss. 4.

(a) *Ibid.* s. 7, ss. 5.

(b) *Ibid.* s. 7, ss. 6.

(c) *Ibid.* s. 8.

(d) The Life Assurance Companies Act, 1870, 33 & 34 Vict. c. 61, s. 3;
34 & 35 Vict. c. 58, s. 1.

This deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and is deemed to form part of the assets of the company.^(e) The deposit is invested by the Court, and the income paid to the company. No certificate of incorporation is to be issued until the deposit has been made. The deposit is to be returned to the company as soon as its life assurance fund, accumulated out of the premiums, has amounted to £40,000.^(f) Until returned to the company the deposit is deemed to form part of the life assurance fund of the company.^(g) When such a company carries on other business besides that of life assurance, a separate account must be kept of all receipts in respect of the life assurance and annuity contracts of the company. Such receipts must form a separate fund, called the life assurance fund of the company, and be as absolutely the security of the life policy and annuity holders as though the company carried on no business other than that of life assurance.^(h)

Statements of
account by.

Life assurance companies are also required to make annual statements of accounts, and also at less frequent intervals, reports on their financial condition, and printed copies of the accounts and reports must be furnished to the share and policy-holders of the company when required by them.⁽ⁱ⁾

Amalgama-
tions of life
assurance
companies.

Any amalgamation of two or more life assurance companies must be sanctioned by the Court on petition. This sanction cannot be given if policy-holders representing one-tenth or more of the total amount assured dissent from the amalgamation.^(k)

A life assurance company may be wound-up on the

(e) 35 & 36 Vict. c. 41, s. 1.

(f) 33 & 34 Vict. c. 61, s. 3.

(g) 35 & 36 Vict. c. 41, s. 1. As to payment of deposit into or out of Court, see Rules of the Board of Trade, 28th August, 1872.

(h) 33 & 34 Vict. c. 61, s. 4; 35 & 36 Vict. c. 41, s. 2.

(i) 33 & 34 Vict. c. 61, ss. 5-11.

(k) *Ibid.* s. 14.

application of one or more of the policy-holders on proof of its insolvency. In determining whether the company is insolvent or not, the Court takes into account its contingent or prospective liability under policies and annuities and other existing contracts. No hearing is granted to the petition until both security for costs is given and a *prima facie* case made out to the satisfaction of the judge. In the case of a proprietary company the Court suspends proceedings on the petition for a reasonable time, to allow calls to be made to produce a sufficient amount of assets to meet the liabilities.^(l)

There are, however, a large number of joint stock companies not formed under the Companies Act, 1862; with regard to these that Act specially provides that every company consisting of seven or more members, and formed in pursuance of any Act of Parliament other than the Companies Act, 1862, or otherwise duly constituted by law, may, with one unimportant exception, register under the Companies Act, 1862,^(m) and will, when so registered, except in one or two unimportant particulars,

A life assurance company may be wound up on the petition of a policy-holder on the ground of insolvency.

Companies not formed under the Companies Act, 1862, can register under it.

(l) 33 & 34 Vict. c. 61, s. 21. As to the winding-up of subsidiary life assurance companies, see 35 & 36 Vict. c. 41, s. 4. On the winding-up of a life assurance company the value of the life annuities and life policies is estimated in manner provided by the following rules:—*Rule for valuing an annuity.*—An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such table cannot be ascertained or adopted to the satisfaction of the Court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of 4 per cent. per annum. *Rule for valuing a policy.*—The value of a policy is to be the difference between the present value of the reversion in the sum assured on the decease of the life, including any bonus or addition thereto made before the commencement of the winding-up, and the present value of the future annual premiums. In calculating such present value the rate of interest is to be assumed as being 4 per cent. per annum, and the rate of mortality as that of the tables known as the Seventeen Offices Experience Tables. The premium to be calculated is to be such premium as, according to such rate of interest and rate of mortality, is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges, 35 & 36 Vict. c. 41, s. 5, and Schedule I.

(m) The Companies Act, 1862, s. 180.

be subject to its provisions in the same way as a company formed under the Act.

Exception.

The one class of companies which may not register under the Act are mutual companies enjoying limited liability by virtue of Act of Parliament or letters patent; probably no such company exists; but the reason of excluding them from the privilege of registering is the inapplicability to such companies of the provisions for

Winding-up of companies not registered under the Companies Acts.

winding-up.(n) The Companies Act, 1862, also contains provisions for the compulsory winding-up of companies not registered under the Act;(o) such companies cannot be wound up voluntarily or under the supervision of the Court, but only by the Court.

As both the registration under the Act of companies formed in some other way and the winding-up of un-registered companies seldom occur in practice, they are beyond the scope of a work of this size, and the reader is referred for further particulars on these points to the Acts themselves.

(n) Thring on Joint Stock Companies, 3rd ed. p. 199.

(o) The Companies Act, 1862, ss. 199-204.

CHAPTER II.

OF THE FORMATION OF A COMPANY—PROMOTERS—THE PROSPECTUS—THE MEMORANDUM AND ARTICLES OF ASSOCIATION.

Promoters.

THE term "promoters" is applied to the persons who originate the company. The term is not one which admits of any very exact definition. Cockburn, C.J., in the case of *Twycross v. Grant*,^(a) said a promoter is "one who undertakes to form a company, with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose;" but Bowen, L.J., in the case of *Whaley Bridge Co. v. Green*^(b) said, "The term promoter is a term not of law but of business, usefully summing up in a single word a number of business operations familiar to the commercial world, by which a company is generally brought into existence."

Definition of term.

A solicitor by merely acting as solicitor to a company in its early stages, does not become a "promoter."^(c) Nor is he an officer of the company within the meaning of sect. 165 of the Companies Act, 1862.^(d)

The promoters of a company stand in a fiduciary relationship to it.^(e) The following consequences arise

Fiduciary relationship between promoters and the company.

- (a) 2 C. P. D. 541.
- (b) 5 Q. B. D. 111. For other definitions see *The Emma Mining Co. v. Lewis*, 27 W. R. 836; and *The Barry Ry. Co.*, 4 Ch. D. 315.
- (c) *Great Wheel Polgooth*, 49 L. T. N. S. 20.
- (d) *In re Great Western (Forest of Dean) Coal Consumers' Co.*, *Carter's Case*, 31 Ch. D. 496.
- (e) *Erlanger v. New Sombrero*, 3 App. Cas. 1236.

from the fiduciary relationship between the promoter and the company.

- (1) A promoter may not make (either directly or indirectly) any profit at the expense of the company he promotes without the knowledge and consent of the company; and the company, on discovery, can compel him to surrender any profit made in violation of this rule.
- (2) If a promoter desire to sell his property to the company he forms, or to procure the company to adopt or enter into any agreement under or in relation to which he will benefit, he must, as a general rule, provide the company with an independent executive, able to protect its interests; otherwise the transaction will be liable to be invalidated, or he may be called on to surrender his profit.
- (3) Once a promoter has begun to promote or otherwise act on behalf of the company, he must give to the company the benefit of any negotiation or contracts secured whilst so acting; *e.g.*, if he enters into a contract to purchase property, he cannot properly sell to the company at a higher price than he gave, and if he do, the company on discovering its rights may rescind the contract, or compel the promoter to surrender his profit. And in such cases the fact that it has become impossible to rescind does not affect the company's alternative right.
- (4) He must make a fair and reasonable use of his position, and must avoid anything like the appearance of undue influence or fraud.^(f)

It is a question of evidence whether or not vendors to

(f) These rules are taken almost verbatim from Mr. Palmer's *Company Precedents*, 5th ed. p. 21, where the cases in support of them are collected and the subject fully discussed. See, on the liability of promoters, the recent cases of *Lydney and Wigpool Iron Ore Co. v. Bird*, 33 Ch. D. 85, and *Ladywell Mining Co. v. Huggins*, 35 Ch. D. 400.

a company are to be treated as promoters or as standing in a fiduciary position so as to be obliged to refund a secret profit they have made by the sale. If a company claims to rescind a contract on the ground that the person selling was in a fiduciary position with regard to the company, and did not disclose the fact that he was selling his own property, it must do so in time to place the vendor in the position he was in at the time of the sale.(g)

A company is of course not liable for the acts and engagements of its promoters, unless it was expressly stipulated in its charter, Act of Parliament, or deed of settlement, that it should be.

How far the company is bound by contracts entered into by the promoters.

If, however, a company has acquired property or exercised rights in pursuance of an engagement entered into by its promoters, it will not be permitted to withdraw from such engagement, if it is one which would have bound the company had it been entered into after its formation.(h) It appears now settled, both at law and in equity, "that a company cannot ratify a contract made on its behalf before it came into existence—cannot ratify a nullity. The only thing that results from what is called a ratification or adoption of such a contract is not the ratification or adoption of a contract *qua* contract, but the creation of an equitable liability, depending on equitable grounds."(i)

The usual practice is, prior to the registration of a company, for a preliminary agreement to be entered into between the vendors of the property the company is to acquire and a trustee for the company, specifying the terms on which the purchase is to be made. This preliminary agreement should never be relied on, but immediately after the registration of the company a fresh agreement should be entered into between the vendors and

The preliminary agreement.

(g) *Ladywell Mining Co. v. Brooks*, 35 Ch. D. 400.

(h) *Edwards v. The Grand Junction Canal Ry. Co.*, 1 My. & Cr. 650.

(i) *Per James, L.J.*, in *In re Empress Engineering Co.*, 16 Ch. D. 130; see also *In re Hereford and South Wales Waggon and Engineering Company*, 2 Ch. D. 621; and *Buckley*, 6th ed. p. 492.

the company on the same terms as the preliminary agreement, so as to bind the company.^(k) A very convenient form for the new agreement to follow is by indorsement on the old one, simply incorporating by reference the provisions of the old one.^(l)

A company may, by acts of part performance, render itself liable to perform the preliminary agreement, although no new contract has been expressly entered into by it; ^(m) that is, the acts of part performance may be such that the Court will infer that the company has bound itself after its incorporation in terms similar to those contained in the preliminary agreement.

Stamping of
agreement.

A stamp of 6*d.* each (or, if the agreement be under seal, 10*s.* each) is usually sufficient for the preliminary and confirmatory agreements; but by the Revenue Act, 1889,⁽ⁿ⁾ such contracts will in some cases require to be stamped with an *ad valorem* duty of 10*s.* per cent. on the consideration. Where such duty is paid, the conveyance or transfer of the property made pursuant to such agreement is not chargeable with any duty. In cases where—as is frequently the case—the rights of the vendor to the company are derived under an agreement, and he sells at an increased price to the company, the *ad valorem* duty is payable on the increase only. In any case the agreement may be stamped with a 6*d.* or 10*s.* stamp only, provided a conveyance or transfer of the property is made and stamped with the proper *ad valorem* duty within six calendar months after the first execution of the agreement.

The provisions of this section of the Revenue Act, 1889, seem intended to apply to cases of sales of goodwill and other property not requiring transfer by deed, in which the parties frequently relied on the agreement and took no further transfer or assignment.

^(k) See hereon, *In re Dale & Plant, Limited*, W. N. 1889, 131; 61 L. T. 206.

^(l) For such a form, see Palmer's Company Precedents, 5th ed. p. 148.

^(m) *Howard v. Patent Ivory Manufacturing Co.*, 38 Ch. D. 156. But see *In re Northumberland Avenue Hotel Co.*, 33 Ch. D. 16.

⁽ⁿ⁾ 52 & 53 Vict. c. 42, s. 15.

An agreement stamped with a 6*d.* or 10*s.* stamp only will be sufficiently stamped for the purpose of enforcing specific performance.

Before the prospectus of a company is issued to the public it is very common for its capital to be what is termed underwritten; that is, contracts will be entered into by persons called "underwriters" to take a specified number of shares if they are not taken by the public. In other words, the underwriters combine to insure the undertaking against risk of collapse through an insufficiency of subscriptions. The consideration of their doing this is usually a commission on the amount of shares they agree to take. The underwriting contract is usually entered into between the underwriters and a promoter, and the commission paid by the promoter. It is very doubtful whether such a contract can be entered into by the company itself.^(o) The doubt rests on two grounds—first, whether the payment of the commission is not an improper application of the company's capital; ^(p) and secondly, whether such a contract may not amount to an issue of shares at a discount.^(q)

Who can enter into the contract.

The Prospectus.

The term "prospectus" is applied to the document put forward by the persons interested in the company, to induce other persons to take shares or otherwise assist the company with money.

The prospectus.

A prospectus can be issued either before or after the registration of a company, but the ordinary practice now is for the directors, as soon as a company is registered, to put forward a statement of the objects and proposed business of the company, in order that investors may judge whether the company is one in which they should place their money. Usually the prospectus is prepared by the promoters before the registration of the company,

When usually issued.

(o) See hereon *The Licensed Victuallers' Co.*, 41 Ch. Div. 1.

(p) *In re Faure Electric Co.*, 40 Ch. D. 141.

(q) See *post*, p. 43

and finally settled and put forward by the directors directly after the company's registration.

Who is responsible for the prospectus.

Both the promoters who frame and take an active part in the issue of the prospectus^(r) and the directors who actually issue it are responsible for it. The directors cannot shirk responsibility by saying that they only acted as agents for the company, or that the prospectus is one got up by the promoters.

Misrepresentations in it.

The prospectus should not contain any misrepresentation of any material fact or misleading statements, and every material fact known to the promoters and directors should be stated by it. The cases on what will and what will not amount to misrepresentation or concealment are too numerous to be dealt with in so small a work as the present, and of course such cases are only of use by way of example, as each prospectus must be judged by its own statements, the circumstances surrounding it, and the knowledge of the persons putting it forward.

Remedy of persons misled.

A person who has been induced to take shares in a company (or otherwise part with money) on the faith of misrepresentations in a prospectus has a twofold remedy: (1) against the company: (2) against the directors and promoters who have put forward the prospectus.

Against the company.

As against the company he can claim to have his contract to take the shares rescinded. In order to do this he must prove—(1) that the prospectus misrepresented or failed to disclose some material fact; (2) that he was misled into taking shares by such misrepresentation or concealment.^(s)

The application for relief must be made promptly.

Any application to rescind a contract to take shares on the ground of misrepresentation must be made promptly as soon as the true facts are learnt, or all right to relief will be forfeited.^(t) In one case a delay of a month

^(r) *Twyecross v. Grant*, 2 C. P. D. 503; *Erlanger v. New Sombrero Co.* 5 Ch. D. 111; 3 App. Cas. 1218.

^(s) The cases on this subject will be found very conveniently cited in Palmer's *Company Precedents*, 5th ed. p. 54.

^(t) *Sharpley v. Jouth, & Co., Ry. Co.*, 2 Ch. D. 663; *Ashley's Case*, 9 Eq. 267.

after the shareholder had given notice of repudiation, which the directors refused to accept, was held to be fatal to the claim; (u) but a reasonable delay will not have this effect; e.g., whilst he is investigating the facts, (x) or whilst *bond fide* negotiations are pending between him and the company. (y)

The right to repudiate cannot be exercised after the commencement of the winding-up of the company; it is then too late, as the rights of third parties, the creditors of the company, have intervened. (z)

In addition to his right to have the contract to take shares rescinded, the person misled by a prospectus has a right of action against the directors, promoters, or others who actually issued or authorised the issue of it.

Remedy against the person making the misrepresentation.

The cases in which a person injured can recover damages against the persons responsible for the prospectus may conveniently be divided into three classes:

Classes of cases in which a person injured can recover damages from the persons responsible for the prospectus.

1. Where the defendants have been guilty of fraud or deceit.
2. Where the prospectus does not comply with the provisions of section 38 of the Companies Act, 1867.
3. Cases falling under the provisions of the Directors' Liability Act, 1890.

Class 3 is really an extension of class 1. The effect of the Directors' Liability Act, 1890, is only to make certain persons named in the Act liable for untrue statements contained in a prospectus, unless such persons can prove that the untrue statements were made without their authority, or that they believed, and reasonably believed, the statements to be true.

Class 3 extension of class.

(u) *Tait's Case*, 3 Eq. 795. See also *Peel's Case*, 2 Ch. 674.

(x) *Ashley's Case*, 9 Eq. 269; *Central Ry. Co. Venezuela v. Kisch*, 2 H. L. 99.

(y) *Neil's Case*, 15 W. R. 894; *Paulé's Case*, 4 Ch. 497.

(z) *Oakes v. Turquand*, 2 H. L. 325; *Stone v. City and County Bank*, 3 C. P. D. 282.

What the person misled must prove.

Cases falling under class 1.—The persons issuing a fraudulent prospectus cannot shelter themselves behind the fact that they are merely agents, for all persons concerned in the commission of a fraud can be treated as principals and held responsible for it. (a) In order to succeed, the person misled must prove (a) the misrepresentation, (b) that it was made by the defendants, (c) that he was deceived and misled and prejudiced by the misrepresentation, (d) that the misrepresentation was made by the defendants with the knowledge that it was false, or without any honest belief in its truth. Until the case of *Derry v. Peek*, recently decided by the House of Lords, (b) the rule was always considered to be that the defendants in such an action would be liable for the representations made by them which they knew to be untrue, or *made by them recklessly, not knowing whether they were true or not.* In *Derry v. Peek* the House of Lords came to the conclusion that mere recklessness was not sufficient, but this has been altered by the Directors' Liability Act, 1890, the object of which is to make directors liable for such want of care.

An ambiguous representation.

Where the representation is ambiguous, the plaintiff must show how he interpreted it, otherwise he does not show one of the grounds necessary for success—that he was deceived. (c)

Contracts entered into by the company or promoters.

Cases falling under Class 2.—Every prospectus of a company, and every notice inviting persons to subscribe for shares, must specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the

(a) *Weir v. Barnett*, 3 Ex. D. 245; *Henderson v. Lacon*, 5 Eq. 249; *Cullen v. Thompson's Trustees*, 4 Macq. 424.

(b) 14 App. Cas. 337. The burden of proof of dishonesty requisite to sustain an action of deceit lies on the plaintiff, and in such an action the plaintiff must show that the defendant made the misleading statement otherwise than in a *bona fide* belief that it was true: *Glasier v. Rolls*, 42 Ch. D. 436.

(c) *Smith v. Chadwick*, 20 Ch. D. 45; 9 App. Cas. 187.

directors or trustees, or otherwise; or such prospectus or notice will be deemed fraudulent on the part of the promoters, directors, and officers of the company, knowingly issuing the same, as regards any person taking shares in the company on the faith of the prospectus, unless he had notice of such contract.(d)

This section of the Act is an extremely difficult one, and has caused much difference of judicial opinion; on the balance of authority, the law must at present be taken to be that the prospectus must disclose not only contracts which impose an obligation on the company, but also all contracts entered into by the promoters, &c., whether before or after they become promoters, &c., which relate to the company's affairs.(e)

What contracts must be disclosed.

The section includes verbal agreements.(f)

When the shareholder comes within the terms of the section he has a remedy against the promoter, &c., personally for damages,(g) but he is not entitled to rescind the contract and have his name removed from the list of shareholders.(h)

Remedy of shareholder where the contract is not disclosed

Cases falling under Class 3.—The Directors' Liability Act, 1890,(i) only applies to prospectuses or notices issued after the passing of the Act—the 18th August, 1890.(k)

The persons entitled to the benefit of the Act are persons who subscribe for any shares, debentures, or debenture stock, on the faith of a prospectus or notice.(l)

Persons entitled to the benefit of the Act.

(d) The Companies Act, 1867, s. 38.

(e) Buckley, 6th ed. p. 570. See hereon also, *Cornell v. Hay*, L. R. T. C. P. 328; *Gover's Case*, 1 Ch. D. 200; *Twycross v. Grant*, 2 C. P. D. 485.

(f) *Capel & Co. v. Sims Ships Composition Co.*, W. N. 1888, 97; 58 L. T. 807.

(g) *Charlton v. Hay*, 31 L. T. 437; 23 W. R. 129; *Twycross v. Grant*, 2 C. P. D. 469.

(h) *Gover's Case*, L. R. 20 Eq. 114; 1 Ch. D. 182 (diss. Brett, L.J.); Buckley, 5th ed. p. 541.

(i) 53 & 54 Vict. c. 64.

(k) *Ibid.* s. 3.

(l) *Ibid.*

Amount of compensation.

They are entitled to compensation for the loss or damage they may have sustained by reason of untrue statements.

Untrue statement must be in a prospectus or notice.

The untrue statement must be in the prospectus or notice, or in some report or memorandum appearing on the face thereof (*i.e.*, of the prospectus or notice), or by reference incorporated therein or issued therewith.

The persons liable for the untrue statements.

The persons liable for such untrue statements are :

- (1) Every person who is a director of the company at the time of the issue of the prospectus or notice.
- (2) Every person who is named in the prospectus or notice as a director of the company.
- (3) Every person who is named in the prospectus or notice as having agreed to become a director of the company, either immediately or after an interval of time.^(m)
- (4) Every promoter of the company.⁽ⁿ⁾
- (5) Every person who has authorised the issue of the prospectus or notice.

The Act makes the above-mentioned persons responsible for all untrue statements in the prospectus or notice, but certain grounds of defence are open to them, the burden of proving which defence is thrown upon the defendants.

Defences open to directors, &c., making untrue statements in a prospectus.

The defences are that the person sought to be made liable for the untrue statement in the prospectus or notice—

- (1). Believed such statement to be true.
- (2) Made the statement on the authority of some other person; or
- (3) Withdrew his consent to the prospectus.

^(m) In classes 2 and 3, such naming must be with the authority of the person named.

⁽ⁿ⁾ "Promoter" means, for this purpose, "A promoter who is a party to the preparation of the prospectus or notice, or the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the Company." Sec. 3, ss. 2.

In defence number 1 it must be shown—

- (a) That the defendant believed the statement to be true.
- (b) That he had reasonable grounds to do so.
- (c) That he retained this belief up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be.

In defence number 2 it must be shown that the statement—

- (a) Was taken from a report or valuation of an engineer, valuer, accountant, or other expert ; Where statement taken from a report, &c.
- or,
- (b) Was a statement made by some official person ;
- or,
- (c) Was contained in some official document.
- (d) In cases falling under class (a) the defendant must have had reasonable grounds to believe that the person making the statement, report, or valuation was competent to make it.
- (e) In all cases the statement in the prospectus must be a correct and fair representation of the statement of the official person, or a correct and fair copy of or extract from the report, valuation, or official document from which it is taken.

In defence number 3 it must be shown that the defendant after having consented to become a director (o)—

- (a) Withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent ; Where person charged with-drew his consent.
- or

(o) The section is ambiguous, and it is not clear whether the words " after having consented to become a director " govern the rest of the sub-section (sec. 3, ss. 1) or not. In the writer's opinion, they apply to all the rest of the sub-section, and consequently to cases falling under classes (a) (b) (c) and (d) above given.

- (b) That the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice (p) that it was so issued; or
- (c) That after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public (p) notice of such withdrawal, and of the reason therefore to be given.

Position of a director who differs from the rest of the board.

The statute is not at all clear as to the course to be taken by a director who differs from the majority of his colleagues as to the truthfulness of a prospectus. For instance, he may consider a statement in a prospectus to be untrue which the rest of the board think unobjectionable: must he resign, or will he be safe in protesting merely? The writer inclines to the opinion that a director in such case can safely adopt course (b) or (c), stated above, and retain his seat on the board.

In the case of companies existing before the passing of the Act which desire to raise further capital by subscriptions for shares or debentures, only those directors are liable who have authorised the issue of the prospectus or notice, or have adopted or ratified it. (q)

Liability to indemnify persons named as directors.

The directors of a company and other persons with whose knowledge or consent a prospectus or notice has been issued, are liable to indemnify a person named as a director, or as agreeing to become a director, if such naming is unauthorised. (r)

Contribution.

The persons liable on a prospectus for untrue statements can recover contribution from each other. (s)

(p) This seems to mean notice by public advertisement.

(q) Sec. 3, ss. 3.

(r) Sec. 4. This section is a long rigmarole amounting to this.

(s) Sec. 5. As such persons are tortfeasors this is an exception to the general rule, as to which see *Merryweather v. Nixan*, 8 T. R. 186.

There is no express provision in the Directors' Liability Act, 1890, preventing an applicant for shares from contracting himself out of the benefit of the Act. Under section 38 of the Companies' Act, 1867 (which provides that a prospectus must give certain particulars of contracts entered into by the company and its promoters) a practice has sprung up of making applicants waive the benefit of the section.^(t) The validity of this waiver clause is questionable, but up to the present it has not been held to be invalid under section 38, and there appears to be no reason why it should not be equally valid under the Directors' Liability Act, 1890.

Power to contract out of the Act.

Waiver Clause.

The rule that exaggeration as distinguished from misrepresentation will not invalidate a contract, applies with peculiar force to companies. The promoters of adventures are so prone to form sanguine expectations as to the prospects of the schemes which they introduce to the public, that some high climbing and exaggeration in the description of the advantages which are likely to be enjoyed by the subscribers to the undertaking may generally be expected in such documents. No prudent man can, owing to the well-known prevalence of exaggeration in such documents, accept the prospectus which is held out by the originators of every new scheme without considerable abatement. But though the prospectus of a new company ought not to be tried by as strict a test as is applied in other cases, it is required to be fair, honest, and *bonâ fide*. There must be no misstatement of any material facts or circumstances.^(u)

Exaggeration in prospectus.

(t) A common form is to state the principal agreement in the prospectus, and then to state "other contracts have been made, but as the above is the only contract to which the company is a party, applicants shall be deemed to waive the publication, in accordance with section 38 of the Companies Act, 1867, of any further particulars as to contracts." See Palmer's Company Precedents, 5th ed. p. 82.

(u) Kerr on Fraud, p. 44. See hereon, *Bellairs v. Tucker*, 13 Q. B. D. 562; *Smith v. Chadwick*, 9 App. Cas. 187.

The Memorandum and Articles of Association.

Memorandum
of association.

Both the memorandum and articles of association are prepared by the promoters of the company.

The memorandum of association is a memorandum containing particulars of the company, which is required to be registered with the registrar of joint stock companies. The requisites which it must contain differ according to the class to which the company belongs.

Its requisites
in a company
limited by
shares.

Where the company is limited by shares, these requisites are :

1. The name of the proposed company, with the addition of the word "limited" as the last word in such name.
2. Where the registered office is to be situated.
3. The objects of the company.
4. A declaration that the liability of the members is limited.
5. The amount of capital and the shares into which it is divided.

Subject to the following regulations :

1. That no subscriber shall take less than one share.
2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.(x)

Its requisites
in a company
limited by
guarantee.

Where the company is limited by guarantee its memorandum of association must contain the first three of the last-mentioned requisites, and

4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before

(x) The Companies Act, 1862, s. 8.

the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.(y)

Where the company is unlimited the memorandum of association need only contain the first three requisites of ^{In an} unlimited company. a company limited by shares.(z)

The memorandum of association may, in the case of a ^{Articles of} company limited by shares, and must, in the case of a ^{Association.} company limited by guarantee, or unlimited, be accompanied, when registered, by articles of association. The articles of association contain the rules and regulations, and specify the mode of conducting business, the number and qualifications of the directors, and generally the whole internal organisation of the company; and answer, in fact, to articles of partnership.(a) They must be in separate paragraphs, numbered arithmetically,(b) must be printed, and a sum of 5s. is payable on their registration. The schedule to the Act contains a table (marked "A") of provisions, all or any of which may be adopted in the articles of association.(c) In the case of a company limited by shares, if it has no articles of association, or where it has articles of association, so far as the provisions of the table are not excluded or modified by them, Table "A" is to be deemed to be the regulations of the company.(d) The articles of association can be altered

(y) The Companies Act, 1862, s. 9.

(z) *Ibid.* s. 10.

(a) The articles of association usually contain clauses regulating the general business of the company in reference to the division of the capital, the issue of shares, increase of capital, calls, forfeiture for non-payment, &c., borrowing powers, general meetings, voting, directors and their qualifications, powers, duties, &c., dividends, accounts, audits, notices, arbitration clause, &c.

(b) The Companies Act, 1862, s. 14.

(c) *Ibid.* s. 50.

(d) *Ibid.* s. 15.

by a special resolution,^(e) and a company cannot contract itself out of its power of making such alteration.^(f)

Both the memorandum and articles of association bear a 10s. stamp, and must be signed by each subscriber, in the presence of, and attested by, one witness at least, and when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were therein contained a covenant on the part of himself, his heirs, executors, and administrators, to observe all the conditions of the memorandum, and to conform to all the regulations contained in the articles, subject to the provisions of the Act.^(g) The number of subscribers must not be less than seven. Where one of seven subscribers was an infant at the time of registration, the company was nevertheless held to be effectually incorporated.^(h)

Number of
subscribers.

Money due
from a member
to the com-
pany deemed
to be a
specialty debt.

All monies payable by any members to the company, in pursuance of the conditions and regulations of the company, are deemed to be a debt due from such member to the company in the nature of a specialty debt.⁽ⁱ⁾

The memorandum and articles of association must be delivered to the Registrar of Joint Stock Companies, who registers them,^(k) upon payment of fees varying, in the case of a company having its capital divided into shares, with the amount of its capital, and in the case of a company not having its capital divided into shares, with the number of its members.^(l) In addition, a limited company which has its capital divided into shares pays an *ad valorem* stamp duty of 2s. for every £100 or fraction of £100 of its nominal capital.^(m)

(e) The Companies Act, 1862, s. 14.

(f) *Walker v. The London Tramway Company*, 12 Ch. D. 705.

(g) The Companies Act, 1862, ss. 11 and 16.

(h) *Nassau Company*, 2 Ch. D. 610.

(i) The Companies Act, 1862, s. 16.

(k) *Ibid.* s. 17.

(l) *Ibid.* Schedule 1, Table B.

(m) 51 & 52 Vict. c. 8, s. 11; 52 Vict. c. 7, s. 16; and see Appendix.

Each member is entitled to have a copy of the memorandum and also of the articles of association (if any) forwarded to him on payment of the sum of 1s., or any less sum prescribed by the company, for each copy. Any company making default in forwarding a copy of the memorandum of association and articles incurs a penalty of not exceeding one pound.⁽ⁿ⁾ Upon registration the company becomes incorporated, with power to hold lands. The certificate of the incorporation of any company given by the registrar is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with.^(o) By the Companies Act, 1877,^(p) any certificate of the incorporation of any company given by the registrar or assistant registrar is to be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of joint-stock companies, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, is in all legal proceedings whatsoever to be received in evidence as of equal validity with the original document.

Copies of
memorandum
and articles of
association.

The definition of the objects of the company in the memorandum of association requires particular attention, and they should be described sufficiently broadly to include every business which the company is likely to be engaged in.

If the objects for which the company is formed differ in the memorandum of association from the prospectus, any person who has agreed to take shares on the faith of the prospectus will not be liable as a shareholder.^(q)

There was, prior to the Companies (Memorandum of

(n) The Companies Act, 1862, s. 19.

(o) *Ibid.* s. 18.

(p) The Companies Act, 1877 (40 & 41 Vict. c. 26), s. 6.

(q) *Fox v. Clifton*, 6 Bing. 776.

Association) Act, 1890,(*r*) which came into force on the 18th August, 1890, no power for a company to alter its memorandum of association so as to extend the scope of the company. The only way by which this could be done was by a voluntary winding-up and reconstruction.

Alterations
in the objects
of the com-
pany.

By that Act the memorandum of association may be altered, if an alteration is required, to enable the company—

- (a) To carry on its business more economically or more efficiently; or
- (b) To attain its main purpose by new or improved means; or
- (c) To enlarge or change the local area of its operations; or
- (d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.(*s*)

Alteration
now made.

The alteration must be made by special resolution; (*t*) and confirmed by the Court.(*u*)

The application for confirmation of the alteration is by petition.(*x*)

If the company is formed under a deed of settlement,(*y*) the deed of settlement can be altered in the

(*r*) 53 & 54 Vict. c. 62.

(*t*) *Ibid.* s. 1, ss. 1.

(*u*) *Ibid.*

(*s*) *Ibid.* s. 1, ss. 5.

(*x*) *Ibid.*

(*y*) A deed of settlement is a common way of forming a company outside the Companies Acts. It will be remembered that such a company can afterwards be registered under Part VII. of the Companies Act, 1862 (see page 13). A deed of settlement is practically a deed containing the provisions usually inserted in the memorandum and articles of the company. By s. 3, ss. 3, of the Act the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, and not being an Act of Parliament, a royal charter, or letters patent.

same way and to the same extent as a memorandum of association, or the form of the constitution of the company may be altered by substituting a memorandum and articles of association for a deed of settlement, either with or without any of the alterations hereinbefore mentioned with respect to the objects of the company.(z)

Before confirming an alteration the Court must be satisfied—

Facts of which the Court must be satisfied before confirming an alteration.

(a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court.

The Court may in the case of any person or class of persons, for special reasons, dispense with the notice required.(a)

Court may dispense with notice.

An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.(b)

Terms on which the order is to be made.

In exercising its discretion the Court is to have regard to the rights and interests of the members of the company, or any class of those members, as well as the rights and interests of the creditors.(c)

The Court can, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such

(z) 53 & 54 Vict. c. 62; s. 1, ss. 1.

(a) *Ibid.* s. 1, ss. 2.

(b) *Ibid.* s. 1, ss. 3.

(c) *Ibid.* s. 1, ss. 4.

directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect.(d)

Dissentient members cannot be bought out with the company's capital. Notice of alteration to be given to the Registrar of Joint Stock Companies.

No part of the capital of the company can be expended in the purchase of the interests of dissentient members.(e)

Where a company has altered its memorandum of association or deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement, so altered, must be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order.(f)

Certificate.

The registrar, on delivery of the office copy of the order and altered memorandum of association, registers them, and certifies the registration, and his certificate is conclusive evidence that all the requisitions of the Act with respect to such alteration and the confirmation thereof have been complied with.(g)

After registration the altered memorandum of association applies to the company as if the company had been originally registered with the altered memorandum of association.(h)

Penalty for default.

The company is liable to a penalty of £10 per day during which it is in default, if it makes default in delivering to the registrar of joint stock companies any document required by the Act to be delivered to him.(i)

Change of company's name.

The name of a company may be changed with the sanction of a special resolution and with the approval of the Board of Trade. No alteration of name affects any rights or obligations of the company, or renders defective any legal proceedings instituted by or against the company.(k)

(d) 53 & 54 Vict. c. 62, s. 1, ss. 4.

(f) *Ibid.*

(h) *Ibid.*

(k) The Companies Acts, 1862, s. 13.

(e) 53 & 54 Vict. c. 62, s. 2.

(g) *Ibid.*

(i) *Ibid.* s. 2, ss. 2.

The fifth requisite of the memorandum of a limited company is that it must set forth the amount and nature of its share capital.^(l) In cases where the shares of a company are from the commencement divided into different classes—as, for instance, ordinary and preference shares, or ordinary and founders' shares—it is not uncommon for the fact to be stated, and the respective rights of the different classes to be specified, in the memorandum, so as to render them unalterable.^(m) Statement as to capital.

Preference shares may be of two kinds: (a) having preferential rights as to dividends only, and (b) having priority also in respect of capital in the event of a division of the company's assets. The memorandum should specify precisely the nature of the preferential rights intended to be conferred. Preference shares.

Founders' shares, which have recently come very much into vogue, and are usually issued to the persons who contribute towards the preliminary expenses of forming the company, vary somewhat in their nature in different cases, but they may be described generally as entitling the holders to divide amongst them an aliquot portion (such as a half or a quarter) of the profits of the company, or in some cases of the surplus profits remaining after a certain specified rate of dividend shall have been paid on the ordinary shares. Founders' shares.

(l) *Ante*, p. 28.

(m) *Ashbury v. Watson*, 30 Ch. D. 376.

CHAPTER III.

OF THE RIGHTS AND LIABILITIES OF MEMBERS.

THE REGISTER OF MEMBERS—SHARES AND STOCK— CONTRIBUTORIES.

The Register of Members.

The register
of members.

EVERY company is required to keep a list of its members, that is, of the members composing it.(a) The register must be open to inspection during business hours between 10 and 4 o'clock,(b) gratis to members, and on payment of a sum not exceeding 1s. to others.(c) The company has power to close the register for any period not exceeding thirty days in each year.(d) Every company having its capital divided into shares is required to forward yearly a list of its members, together with other particulars, to the registrar of joint stock companies.(e)

Registrar.

The colonial
register.

A company whose objects comprise the transaction of business in a colony may keep in any colony where it does business a colonial register for the members resident in that colony.

Notice of the office where this branch or colonial register is kept, and of any changes in or discontinuance of this office, must be given to the registrar of joint stock companies.

The colonial register is deemed to be part of the company's register of members, and is *prima facie* evidence of all matters entered in it.

(a) 30 Vict. c. 29, s. 2.

(b) The Companies Act, 1862, s. 32.

(c) *Ibid.* s. 33.

(d) *Ibid.* s. 23.

(e) *Ibid.* s. 6. For form of list, see Appendix to Act.

Entries in the colonial register are to be transmitted to the registered office of the company as soon as may be after they are made, and a duplicate of its colonial register is to be kept at the registered office.(f)

If the name of any person is, without sufficient cause, entered or omitted from the register of members, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, by motion in any of Her Majesty's Superior Courts of Law or Equity, or by application in Chambers, or to the Vice-Warden of the Stannaries, if the company be under his jurisdiction, or in such other manner as the Court may direct, apply for an order of the Court that the register may be rectified; and the Court may, if satisfied of the justice of the case, make an order for the rectification of the register. The Court may, on any such application, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered on or omitted from the register, and generally the Court may, in any such proceedings, decide any question that it may be necessary or expedient to decide for the rectification of the register.(g)

Remedy for improper entry or omission of entry on the register.

Rectification.

Any rectification of the colonial register of a company must be made by a competent Court of the colony in which the register is kept.(h)

Where any person has been induced by the misrepresentation, either of an individual or of the company, to become a member, his proper course is to proceed against the individual or directors by action, and to make application, in the manner before mentioned, to

Misrepresentation.

(f) The Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30), s. 3.

(g) The Companies Act, 1862, s. 35. *In re Hull and County Bank, Burgess's Case*, 15 Ch. D. 507.

(h) 46 & 47 Vict. c. 30, s. 3, ss. 3.

have his name taken off the list of members and for rectification of the register. He must, however, do this before a petition for winding-up the company has been presented, as a contributory in a winding-up under the Act of 1862 cannot plead the fact of his having been induced to take his shares by misrepresentation, as a reason for his being struck off the list of contributories.⁽ⁱ⁾

Contracts to
take shares.

Contracts to take shares are governed by the same rules as other contracts, and to constitute a binding agreement to take shares the letter of application must be followed by allotment, which must be communicated to the applicant.^(k) Mere allotment and entry of the applicant's name on the register is not sufficient to bind him, as it is not the duty of the applicant to see whether the allotment has been made or not. The notice of allotment need not be communicated in writing, but there must be notice, verbal or in writing, to show the applicant that the company has accepted his offer.^(l) This does not, of course, apply to the persons who subscribe the memorandum and articles of association. Each subscriber by subscribing agrees to take from the company the shares set opposite to his name, and to pay for them in money or money's worth,^(m) unless otherwise provided by a contract in writing, filed pursuant to sect. 25 of the Companies Act, 1867. He will be liable for such shares even although in fact no shares have ever been allotted to him or his name been put on the register,⁽ⁿ⁾ unless the whole

(i) *Oakes v. Turquand*, L. R. 2 H. L. 325.

(k) *Pellat's Case*, L. R. 2 Ch. 527; *Hebb's Case*, L. R. 4 Eq. 9; *Gunn's Case*, L. R. 3 Ch. 40; *Sahlgreen & Carrall's Case*, L. R. 3 Ch. 323; *Fletcher's Case*, 37 L. J. Ch. 49; 16 W. R. 75; 17 L. T. 136; *Tothill's Case*, L. R. 1 Ch. 85; *Ward's Case*, L. R. 10 Eq. 659, 662.

(l) *Gunn's Case*, *supra*; *Ex p. Fox*, 11 W. R. 577; 2 N. R. 1; 8 L. T. 223; *Land-Shipping Co.*, 18 L. T. 787.

(m) *Migott's Case*, L. R. 4 Eq. 238; *Fothergill's Case*, L. R. 8 Ch. 270; *Nichol's Case*, 29 Ch. D. 421.

(n) *Evan's Case*, L. R. 2 Ch. 427.

of the shares in the company have been allotted to other persons.(o)

Generally shares are only transferable by deed or writing under seal, but exceptions occur in the case of scrip or share-warrants issued in respect of fully paid-up shares; such scrip and share-warrants can be transferable to bearer, and will then pass by mere delivery.(p)

By the Companies Act, 1862, shares in companies under that Act are to be transferred in manner provided by the regulations of the company.(q) The form given in the schedule to the Act is to be executed by both transferor and transferee.(r) It is very common for the transfer of shares to be subject to certain restrictions, the most usual one being that all calls shall have been previously paid, while another often is that the directors shall consent to the transfer. In such a case the directors are in the position of trustees, being bound to act *bona fide* and not capriciously.(s) Subject to any such regulations the right of transfer is absolute, so that a conveyance to a pauper will be valid unless made with a reservation.(t) A contract for the sale of shares on the Stock Exchange does not import an undertaking by the vendor that the company will register the transferee.(u)

On the death of a shareholder his personal representatives have a statutory right to transfer the shares held by the deceased,(x) but the articles of association generally give them, in addition, the right to be themselves registered as the holders of the shares upon production of proper evidence of their representative capacity.

(o) *Mackley's Case*, 1 Ch. D. 247.

(p) The Companies Act, 1867, s. 27.

(q) The Companies Act, 1862, s. 22.

(r) *Ibid.* Sch. 1, Table A, Art. 9.

(s) *Ex p. Penny*, L. R. 8 Ch. 446.

(t) *Weston's Case*, L. R. 4 Ch. 20.

(u) *London Founders' Association v. Clarke*, 20 Q. B. D. 576.

(x) The Companies Act, 1862, s. 24.

Transfer of shares.

Transmission of shares on death.

Shares and Stock.

Difference
between
stock and
shares.

The chief difference between stock and shares is that the former must be fully paid up, whilst shares are often only partly paid up; stock, too, can be split up into fractional amounts, whilst shares are each of some definite amount and cannot be subdivided.

Power to
issue prefer-
ence shares.

In the absence of an authority in the memorandum of association, the issuing of preference shares is an alteration of the constitution of the company, and *ultra vires*.^(y) And where the articles gave power to issue preference shares to a limited number, the number cannot be increased by special resolution,^(z) the principle being that, in the absence of express permission, it is an implied condition that the shareholders are entitled to rank equally in respect of dividend.

Shares.

The shares of a company formed under the Companies Act, 1862, are personal estate, and each share in the case of a company having its capital divided into shares must be distinguished by its appropriate number.^(a) They are not goods, wares, or merchandise, within the 17th section of the Statute of Frauds. But under an Act, passed in 1867, called Leeman's Act,^(b) any contract or agreement for the sale of shares or stock or other interest in any joint stock *banking* company, is void, unless such contract or agreement sets forth in writing the numbers of the shares, stock, or other interest, in the register of the company, or, where there is no register, the persons in whose name the shares, stock, or interest stand as registered proprietors. In *Neilson v. James*,^(c) it was

Contracts for
sale of shares
in Joint Stock
Banking
Company.

(y) *Hutton v. Scarborough Hotel Co.*, No. 1, 2 Dr. & Sm., 514; 4 De G. & S. 672; 12 L. T. 228, 289; 13 W. R. 574, 631; *Moss v. Syers*, 11 W. R. 1046.

(z) *Melhado v. Hamilton*, 28 L. T. 578; 29 L. T. 364.

(a) The Companies Act, 1862, s. 22.

(b) 30 Vict. c. 29.

(c) 9 Q. B. D. 546; see also *Perry v. Barnett*, 14 Q. B. D. 467 15 Q. B. D. 388.

proved that the custom of the Stock Exchange (contrary to this Act) was to omit the name of the registered proprietor in the bought and sold notes which constitute the agreement on sales of shares on the Stock Exchange. This custom was held to be unreasonable and illegal.

Previously to the Companies Act, 1867, ^(d) shares Payment in fully paid-up shares. might be paid for in money's worth as well as money; and vendors, contractors, and other persons dealing with the company might be paid by the allotment to them of fully paid up shares. ^(e) This was found to open a door to fraud, and it was accordingly provided by that Act that every share must be paid for in cash, unless it is otherwise determined by a contract filed with the registrar of joint stock companies. ^(f) But if shares which are Transferee without notice. not paid for in cash are issued to some person, and they are handed over to a purchaser who takes them *bonâ fide* and without notice of the manner in which they were issued, the purchaser is not liable to be placed on the list of contributories in respect of the shares. ^(g)

If a person taking shares from a registered holder Onus of proof of notice. knows when he acquires the shares that they were not fully paid for in cash, he will be liable to pay the full nominal amount of the shares, unless a contract has been duly registered under section 25, but the onus of proving such knowledge lies on the person alleging it, at any rate where the certificate states that the shares are fully paid up. ^(h) The fact that the company contracted to register the contract and did not do so, will not prevent the liquidator recovering from the holder. ⁽ⁱ⁾

Sect. 25 of the Companies Act, 1867, ^(k) provides When contract must be filed.

(d) 30 & 31 Vict. c. 131.

(e) Thring on Joint Stock Companies, 3rd ed. p. 489.

(f) The Companies Act, 1867, s. 25.

(g) *Burkinshaw v. Nicholls*, 3 App. Cas. 1004. See also *In re Barrow-in-Furness and Northern Counties Land and Investment Co.*, 14 Ch. D. 400; *In re Stapleford Colliery Co., Barrow's Case*, 14 Ch. D. 432.

(h) *Re A. W. Hall & Co.*, 37 Ch. D. 712.

(i) *In re the London Celluloid Co.*, 39 Ch. D. 190.

(k) 30 & 31 Vict. c. 131.

by a special resolution,^(e) and a company cannot contract itself out of its power of making such alteration.^(f)

Number of
subscribers.

Both the memorandum and articles of association bear a 10s. stamp, and must be signed by each subscriber, in the presence of, and attested by, one witness at least, and when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were therein contained a covenant on the part of himself, his heirs, executors, and administrators, to observe all the conditions of the memorandum, and to conform to all the regulations contained in the articles, subject to the provisions of the Act.^(g) The number of subscribers must not be less than seven. Where one of seven subscribers was an infant at the time of registration, the company was nevertheless held to be effectually incorporated.^(h)

Money due
from a member
to the com-
pany deemed
to be a
specialty debt.

All monies payable by any members to the company, in pursuance of the conditions and regulations of the company, are deemed to be a debt due from such member to the company in the nature of a specialty debt.⁽ⁱ⁾

The memorandum and articles of association must be delivered to the Registrar of Joint Stock Companies, who registers them,^(k) upon payment of fees varying, in the case of a company having its capital divided into shares, with the amount of its capital, and in the case of a company not having its capital divided into shares, with the number of its members.^(l) In addition, a limited company which has its capital divided into shares pays an *ad valorem* stamp duty of 2s. for every £100 or fraction of £100 of its nominal capital.^(m)

(e) The Companies Act, 1862, s. 14.

(f) *Walker v. The London Tramway Company*, 12 Ch. D. 705.

(g) The Companies Act, 1862, ss. 11 and 16.

(h) *Nassau Company*, 2 Ch. D. 610.

(i) The Companies Act, 1862, s. 16.

(k) *Ibid.* s. 17.

(l) *Ibid.* Schedule I, Table B.

(m) 51 & 52 Vict. c. 8, s. 11; 52 Vict. c. 7, s. 16; and see Appendix.

Each member is entitled to have a copy of the memorandum and also of the articles of association (if any) forwarded to him on payment of the sum of 1s., or any less sum prescribed by the company, for each copy. Any company making default in forwarding a copy of the memorandum of association and articles incurs a penalty of not exceeding one pound.⁽ⁿ⁾ Upon registration the company becomes incorporated, with power to hold lands. The certificate of the incorporation of any company given by the registrar is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with.^(o) By the Companies Act, 1877,^(p) any certificate of the incorporation of any company given by the registrar or assistant registrar is to be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of joint-stock companies, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, is in all legal proceedings whatsoever to be received in evidence as of equal validity with the original document.

Copies of
memorandum
and articles of
association.

The definition of the objects of the company in the memorandum of association requires particular attention, and they should be described sufficiently broadly to include every business which the company is likely to be engaged in.

If the objects for which the company is formed differ in the memorandum of association from the prospectus, any person who has agreed to take shares on the faith of the prospectus will not be liable as a shareholder.^(q)

There was, prior to the Companies (Memorandum of

(n) The Companies Act, 1862, s. 19.

(o) *Ibid.* s. 18.

(p) The Companies Act, 1877 (40 & 41 Vict. c. 26), s. 6.

(q) *Fox v. Clifton*, 6 Bing. 776.

appointed directors,(y) or not properly qualified,(z) or if the length of the notice was less than that prescribed by the articles.

Forfeiture.

On non-payment of a call, the company is usually empowered by its articles to forfeit the share in respect of which default has been made. This right is wholly regulated by and dependent upon the terms of the articles, which will be construed very strictly.(a)

Share-warrants.

In a company limited by shares, share-warrants may be issued in respect of shares fully paid up, or stock, if expressly authorised by the articles.(b) The share-warrants pass by delivery, and are negotiable instruments,(c) payable to bearer. Interest on them can be made payable by coupons or otherwise.(d) The bearer is entitled to have his name placed on the list of members on surrendering the warrant for cancellation.(e) A share-warrant is liable to a stamp-duty equal to three times the amount chargeable on a deed transferring the share or shares.(f)

Trusts.

No trusts can be recorded on the register,(g) and consequently trustees are liable as contributories.

Charging orders.

A judgment creditor can obtain *ex parte* an order charging any stock or shares standing to the credit of the judgment debtor with the amount of his debt. No proceedings can be taken to enforce the charge until six months from the date of the order.(h) Notice of the order operates as a *distringas*.(i)

Money due to a shareholder from a company in voluntary winding up, and in the hands of the liquidator, cannot be attached by a judgment creditor of the shareholder.(k)

(y) *Howbeach Coal Co. v. Teague*, 5 H. & N. 151.

(z) *Iron Ship Co. v. Blunt*, L. R. 3 C. P. 484.

(a) *Hart v. Clark*, 6 H. L. Cas. 633.

(b) The Companies Act, 1867, s. 27.

(d) *Ibid.* s. 27.

(f) *Ibid.* s. 33.

(h) 1 & 2 Vict c. 110, s. 14.

(k) *Mack v. Ward*, W. N. 1884, 16.

(c) *Ibid.* s. 28.

(e) *Ibid.* s. 29.

(g) *Ibid.* s. 30.

(i) *Ibid.* s. 15.

Persons interested in stock or shares standing in the name of a trustee or another person may prevent any fraudulent transfer of the stock or shares. The method of doing so, which was formerly called a "distringas," is as follows:—

The person claiming to be interested in the stock or shares, or his solicitor, must make an affidavit stating that he is beneficially interested in the stock or shares described in a notice which is exhibited to the affidavit.^(l) The affidavit is filed at the central office. An office copy of the affidavit and a duplicate of the notice, authenticated by the seal of the central office, must then be served upon the company.

A note must be appended to the affidavit, stating the person on whose behalf it is filed, and to what address notices for that person are to be sent.

The company served with the notice will not transfer the stock or shares, or (if the notice requires it not to do so) pay the dividends upon them, without giving eight days' notice to the person who has filed the affidavit. This interval gives an opportunity of applying for an injunction to restrain such transfer or payment. The notice by the company to the person filing the affidavit may be sent by prepaid letter to the address named in the note to the affidavit.^(m)

Contributories.

The term "contributory" means every person liable to contribute to the assets of the company in the event of its being wound up.⁽ⁿ⁾ Contributories are divided into two classes: (1) Present members; (2) Past members. (Past members liable as contributories are persons who have

^(l) For form of this affidavit and notice, see R. S. C. Appendix B, Forms Nos. 22 & 27.

^(m) R. S. C. Ord. xlvi.

⁽ⁿ⁾ The Companies Act, 1862, s. 74. *In re Whitley Steel Co.*, 49 L. J. Ch. 176. See also *In re Albion Life Assurance Co.*, 15 Ch. D. 79; affirmed on appeal, 16 Ch. D. 83.

not ceased to be members for a period of a year or upwards prior to the commencement of the winding-up.) Where the company is limited by shares or guarantee, no contribution can be required from any member exceeding the amount unpaid on his shares or guarantee. The past members are not liable to contribute until it appears to the Court that the existing members are unable to satisfy the contributions required from them, and are then not liable for debts contracted since they ceased to be members. In practice the contributories of a company are divided into two classes: (1) the "A" list; (2) the "B" list. The "A" list consists of the present members—*i.e.*, of those who are members of the company at the commencement of the winding-up. The "B" list consists of past members who have ceased to be members within a year before the commencement of the winding-up. The "A" list is settled as early in the winding-up as possible; but it is the uniform practice of the Court not to settle the "B" list until it has been shown that the present members are unable to satisfy the debts.^(o)

Past members.

"A" and
"B" lists of
contributories.

A shareholder is only liable as a "B" contributory where he has ceased to be a member for less than a year prior to the commencement of the winding-up. Where shareholders in a company had transferred their shares less than a year before a resolution of the company for a voluntary winding-up, but more than a year before a subsequent compulsory order for winding-up, they were held to be not liable to be placed on the list of contributories.^(p)

Liability of
"B" con-
tributories.

The "A" contributories are primarily liable to pay the debts, and must be first individually exhausted before any "B" contributory can be called upon. The liability of a "B" contributory does not arise until all the assets of the company (including the "A" contributions) have been applied in payment *pari passu* of all the debts of the company, and is then limited:

(o) Buckley on the Companies Acts, 6th ed. p. 146.

(p) *Taurine Co.*, 25 Ch. D. 118.

1. In the case of a limited company—To the amount left unpaid on his shares by the corresponding “A” contributory.
2. To such *residuum* of the debts contracted before he ceased to be a member as still remain undischarged.(q)

The Court will not marshal in favour of the creditors, but will first apply the funds obtained from the “A” contributories to all the debts equally, and will then call upon the “B” contributories for those funds only for which they are liable.(r)

Court will not marshal in favour of creditors.

The contributions received from the “B” members are not, however, divided exclusively among the old creditors in respect of whose debts they are paid, but form part of the general assets of the company for the payment of all the creditors.(s)

In the case of successive transfers of shares, although as between themselves each transferor has a right to be indemnified by his transferee, yet as regards the company every person who has held the shares within a year before the commencement of the winding-up is liable to be placed upon the “B” list, and the liquidator may place

Successive transfers.

(q) Buckley on the Companies Acts, 6th ed. p. 157.

(r) Lord Westbury in *Well v. Wiffin*, 5 H. L. 728, lays down the rule as follows:—“The direction (of section 38) is this: You will apply all that you can get from the existing members in payment of the existing debts, no matter of what date. If after you have done that there remain debts, unsatisfied, so that you have to resort to the members who have passed away from the company within a year, then you will be compelled to classify the residuum of the debts so remaining, and ascertain what part of that residuum is to be attributed to past debts; that is, to debts which pre-existed the transfer made by past members, and what portion is to be attributed to the new debts which have arisen subsequently to the date of the last transfer. When you have ascertained the proportion which is attributable to debts which existed when the transfers were made, then if there have been several transfers within the year, you will be compelled of necessity to subdivide that portion of the residuum into several portions according as you find that transfers have been made within the past year.” See also *Morris’ Case*, L. R. 7 Ch. 200.

(s) *In re Accidental and Marine Assurance Corporation*, L. R. 5 Ch. 428.

all such persons upon the list, and come upon any one of them for the calls.(t)

Contracts
limiting the
liability of
the members.

The Act does not invalidate any provision contained in any policy of insurance, or other contract, limiting the liability of individual members, or whereby the funds of the company are alone liable in respect of such policy or contract.

Nature of
liability of
contributory.

The liability of any person to contribute to the assets of a company under the Companies Act, 1862, in the event of its being wound up, creates a debt in the nature of a specialty, accruing due from such person at the time when his liability commenced, but payable at the time or times when calls are made for enforcing such liability. In the case of the bankruptcy of a contributory, proof may be made against his estate for the estimated value of his liability to future calls as well as calls already made.(u) This, however, cannot be done where the company is a going concern, for then the liability to future calls is incapable of being fairly estimated.(x)

Bankruptcy of
contributory.

Transfers of
shares in
insolvent
companies.

Transfers of shares are frequently made, when a company is threatened with insolvency, for the purpose of getting rid of liability; these are good, even when the transferee is a man of straw, and even where the transferor is himself a director and knows that a call is imminent,(y) if the whole interest in the shares has been *bond fide* parted with. The transferor will then only be liable as a "B" contributory, or if the transfer was made more than one year before the commencement of the winding-up, will escape liability altogether, although he knew at the time the transfer was made that the company was hopelessly insolvent.(z) On the death of a

(t) *Kellock v. Enthoven*, L. R. 9 Q. B. 421.

(u) The Companies Act, 1862, s. 75. *Ex p. Pickering, re Pickering*, L. R. 4 Ch. 58.

(x) *Ex p. Pickering, supra*. A corporation may prove a debt, vote, and otherwise act in bankruptcy by any of its officers authorised in that behalf under the seal of the corporation; Bankruptcy Act, 1883, s. 148.

(y) *Re Cavley & Co.*, 42 Ch. D. 209.

(z) *De Pass's Case*, 4 De G. & J. 544; *Slater's Case*, 35 Beav. 391; 14 W. R. 446; *Weston's Case*, L. R. 4 Ch. 20. Where, however, the company

shareholder his personal representatives and (as the liabilities attaching to shares are debts charged on the real estate by 3 & 4 Will. IV. c. 104) the devisees of his real estate, or heir-at-law, will be liable to be placed on the list of contributories,^(a) but as no liability attaches to the real estate until the personal estate is exhausted, the personal representatives should, in strictness, be first placed upon the list, and then, if their means are found insufficient to pay the calls, the devisees should be called upon to supply the deficiency; in order, however, to prevent needless expense, the Court allows both the personal representatives and the heirs and devisees to be put at the same time upon the list of contributories when the personal estate is obviously insufficient, in order that the case may be proved once for all against both sets of representatives. In the case of the bankruptcy of a shareholder, his trustee in bankruptcy is placed upon the list. The husband of a female shareholder will in the same way be a contributory in respect of her shares, and the right course is to settle both husband and wife on the list of contributories, so that if the wife survive, her liability may survive also,^(b) although if she has separate estate, and has contracted on the credit of it, her name will be added to the list in respect of such estate.^(c)

The rights of a contributory with regard to debts owing to him from the company, vary according to the nature of the debt and company.

is situated within the jurisdiction of the Stannaries, the rule is different, as the Stannaries Act, 1869 (32 & 33 Vict. c. 19), s. 35, expressly declares that a transfer for the purpose of getting rid of liability for a nominal or no consideration, or to a person without apparent ability to pay the expenses of working a mine, or to a person in the menial or domestic employment of the transferor, shall be presumed to be fraudulent, and need not be recognised by the company or by the Court on the winding up. See hereon *In re Wheal Unity Wood Mining Co.*; *Ohynowellis' Case*, 15 Ch. D. 13.

(a) Thring on Joint Stock Companies, 3rd ed. pp. 85, 86.

(b) *Luard's Case*, 1 D. F. & J. 533; *Burlinson's Case*, 3 De G. & Sm. 18; *Sadler's Case*, *ibid.* 36.

(c) Thring on Joint Stock Companies, 3rd ed. pp. 86, 87.

The debt may be—

1. A debt due to him in his character of member ;
e.g., for dividends.
2. A debt due to him as an ordinary creditor ; *e.g.*,
for money advanced.

Debt due to
contributory in
his character
of member.

As regards the first class it is expressly provided (*d*) that no sum due to any member of the company in his character of member (*e.g.*, a dividend payable before the winding up which the member has not received) shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company ; but any such sum may be taken into account for the purposes of the final adjustment of the rights of contributories amongst themselves.

Debt due to
contributory as
an ordinary
creditor,

The rights of the contributory, where his debt is of second class, were formerly supposed to differ in a "limited" and an "unlimited" company, but are now the same in both cases. The contributory cannot set off his debt, but must first pay all claims due from him to the company, and will then be entitled to receive a dividend on his debt with the other creditors ; (*e*) and it makes no difference whether the call was made before or after the order for winding up. (*f*) If, however, the contributory is bankrupt, the bankruptcy rule prevails, and his trustee may set off against the calls any debt (except one due to the bankrupt as a member) due from the winding-up company to the contributory. (*g*)

in a "limited"
company ;
in an "un-
limited"
company.

(*d*) The Companies Act, 1862, s. 38, ss. 7.

(*e*) *Grissell's Case*, L. R. 1 Ch. 528.

(*f*) *Calisher's Case*, L. R. 5 Eq. 214 ; see hereon *Re Paraguassu Tram-road Co.*, *Black's Case*, L. R. 8 Ch. 254 ; *In re Whitehouse & Co.*, 9 Ch. D. 595 ; *Grissell's Case*, *supra* ; *Re West Hartlepool Co.*, *Gunn's Case*, 38 L. T. 139 ; *Re West of England Bank*, *Ex p. Branwhite*, 27 W. R. 646 ; 40 L. T. 652 ; 48 L. J. Ch. 463.

(*g*) *In re Duckworth*, L. R. 2 Ch. 578 ; *Ex p. Cooper*, 15 L. T. 637 ; *Ex p. Strang*, L. R. 5 Ch. 492. See also *Ex p. Morton*, 17 W. R. 606 ; 38 L. J. Ch. 390.

CHAPTER IV.

OF THE MANAGEMENT OF A COMPANY AND
MATTERS INCIDENTAL THERETO.

DIRECTORS—OF ACTS ULTRA VIRES—DEBENTURES—DIVIDENDS—INCREASE AND REDUCTION OF CAPITAL—OTHER MATTERS RELATING TO MANAGEMENT.

Directors.

THE management of the company is usually left to a board of directors ; their authority is limited by the memorandum and articles of association, and they are the *particular* not *general* agents of the company.^(a) All persons, third parties as well as members of the company, are deemed to be acquainted with the instruments creating their authority, and any act of the directors exceeding their limited authority will be void, unless it be capable of being, and be, sanctioned by the company.

Directors are in one sense trustees for the company ; ^{Difference between trustees and directors.} *e.g.*, they are trustees of all assets of the company which have come into their hands or are under their control, but there is an essential distinction between trustees and directors. “ A trustee is a man who is the owner of the “ property, and deals with it as principal, as owner, and “ as master, subject only to an equitable obligation to “ account to some persons to whom he stands in relation “ of trustee, and who are his *cestui que trust*. The same “ individual may fill the office of director and also be a “ trustee having property, but that is a rare, exceptional, “ and casual circumstance. The office of director is that “ of a paid servant of the company. A director never

(a) Thring on Joint Stock Companies, 3rd ed. p. 112.

“enters into a contract for himself, but he enters into contracts for his principal; that is, for the company of whom he is a director and for whom he is acting. He cannot sue on such contracts, nor be sued on them unless he exceeds his authority.”(b)

Quorum of directors.

The articles of association usually define, or leave to be defined, by a resolution of the directors themselves, how many of the directors present at a board meeting shall form a quorum. If the articles provide that two directors may form a quorum, this only applies when the directors have been appointed, and does not apply to the subscribers to the memorandum of association acting *pro tem.* as directors under Table A of the Companies Act, 1862.(c) A bare quorum can only act if proper notice has been given, so that other members of the board know the agenda, and can attend if they wish.(d) Two out of four directors cannot form a quorum without giving notice of meeting to the other directors.(e)

Power of directors.

The articles of association usually give the directors full power to do all acts necessary to carry on the ordinary business of the company, and if the articles of association are silent upon the point, the law would imply such authority. Their authority is construed liberally. In *Hampson v. Price's Patent Candle Co.*(f) the Master of the Rolls held that the directors of a company were at liberty to reward the servants of a company when there had been a very good year, by giving each of them who was in their service and was of good character a gratuity equal to a week's wages,

Conduct of directors—how impugned.

The conduct of the directors can generally only be impugned at a general meeting, for they are the servants of

(b) James, L.J., in *Smith v. Anderson*, 15 Ch. D. 275. Cited by Kay, J., in the *Faure Electric Accumulator Co.*, 40 Ch. D. 141.

(c) *In re London & Southern Counties Freehold Land Co.*, 31 Ch. D. 223.

(d) *In re Homer District Consolidated Gold Mines, Ex p. Smith*, 39 Ch. D. 546.

(e) *In re Portuguese Consolidated Copper Mines*, 42 Ch. D. 160.

(f) 24 W. R. 754; see also *Hutton v. West Cork Ry. Co.*, 23 Ch. D. 654; and *Henderson v. Bank of Australasia*, 40 Ch. D. 170.

the company, and not of the individual shareholders.(g) Where they are appointed for a limited time, the company has no inherent power to remove them before its expiration.(h) As they themselves are agents, the rule *delegatus non potest delegare* is *prima facie* applicable to them, and their power of acting through agents and binding the company by the acts of their agents is governed entirely by the articles of association. Delegation of powers by directors.

The directors cannot bind the company by acts *ultra vires*,(i) and such acts will only become binding on the company if it can be shown that each shareholder has individually acquiesced in them.(k)

The adoption of a contract *intra vires* the company but *ultra vires* the directors may be effected by an ordinary resolution, without altering the articles.(l) Adoption ultra vires contract.

If directors of a company apply the money of the company for purposes so outside its powers that the company could not sanction such application, they may be made personally liable as for a breach of trust; but if they apply the money of the company, or exercise its powers, in a manner which is not *ultra vires*, then a strong and clear case of misfeasance must be made out to render them liable for a loss thereby occasioned to the company.(m) When liable for a loss arising through their acts.

Payment of brokerage or commission to a stockbroker for placing a company's shares is an improper application of its capital. It still remains an open question whether a company can take power by its memorandum to do this,(n) but a power in the memorandum to do whatever may be "conducive" to the objects of the company will not authorise this.(m) Payment of brokerage by directors.

The directors are not the agents of the company to Directors as agents.

(g) Lindley on Company Law, p. 303.

(h) *Imperial Hydropathic Co.*, 23 Ch. D. 1.

(i) For explanation of *ultra vires*, see later in this chapter.

(k) Buckley, 6th ed. pp. 493, 494, and cases there cited.

(l) *Grant v. United Kingdom Switchback Ry. Co.*, 40 Ch. D. 135.

(m) *In re Faure Electric Accumulator Co.*, 40 Ch. D. 141.

(n) *The Licensed Victuallers' Co.*, 42 Ch. D. 1.

commit a fraud, and the company will not be bound if the directors enter into a fraudulent and illegal agreement on its behalf.^(p) But, on the other hand, the company cannot take advantage of the fraud of its agent, and cannot, while repudiating a misrepresentation made by the agent, enforce a contract entered into through the misrepresentation.

As trustees.

The directors of the company fill a double capacity. They are: (1) Agents of the company; (2) Trustees for the shareholders of the powers committed to them. As agents they are governed by the ordinary laws of principal and agent; as trustees they must use the powers conferred upon them for the benefit of the shareholders. For instance, in the case of the *Madrid Bank v. Pelly*,^(q) the directors made a premature allotment of shares, and a premature payment of £5000 to the promoters. The promoters then paid to four of the directors £500 each. There was no evidence that this was done under any agreement, and the directors said the money was given them as a mere matter of bounty. On the company being wound up they were ordered to refund the money. In *Parker v. McKenna*^(r) directors were held liable to refund profits made by them by issuing new shares to their nominees at a time when the shares were at a considerable premium.

And in a later case directors were held jointly and severally liable to refund all bonuses received by them for lending money of the company, and this notwithstanding the fact that such lendings had been profitable to the company.^(s)

In *The Joint Stock Discount Co. v. Brown*^(t) directors were held jointly and severally liable to refund moneys they had lost in taking on behalf of the company shares

(p) *British and American Telegraph Co., v. Albion Bank*, L. R. 7 Ex. 119.

(q) L. R. 7 Eq. 442.

(r) L. R. 10 Ch. 96.

(s) *Municipal Permanent Investment Society v. Richards*, W. N. 1889, 103.

(t) L. R. 8 Eq. 381.

in another company, which they (the directors) were interested in bringing out. In this case the taking shares in the new company was outside the scope of the original company, and therefore *ultra vires*.

In the *Carriage Co-operative Supply Association*(u) the directors, who had issued fully paid-up shares to a promoter by way of promotion money, and then accepted from him a sufficient number of the shares to qualify them for the office of director, were held to be jointly and severally liable to the company for the par value of the total number of shares derived from the promoters.

The Court will not make directors personally liable for a mere error in judgment when they have acted *bona fide*, intending to do what is best for the company.(x) Nor if they keep within their powers will the Court restrain them from exercising a discretion vested in them, although their conduct may seem foolish, unless it was alleged and proved that they are influenced by improper motives.(y)

It appears that directors will not be personally liable for acts *ultra vires* where they have made an honest mistake as to the extent of their powers.(z)

In general the liability of the directors is the same as that of ordinary members; it is, however, provided by the Companies Act, 1867,(a) that the liability of the directors of a limited company may, if so provided by the memorandum of association, as originally prepared or as altered by special resolution, be unlimited. But even in this case no contribution required from any such director or manager is to exceed the amount which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution, in order to satisfy the debts and liabilities of the company and the costs of

Unlimited
liability of
directors.

(u) 27 Ch. D. 322. See also, as to the effect of a gift by a promoter to directors, *Eden v. Ridsdale Railway Lamp, &c., Co.*, 23 Q. B. D. 368.

(x) *Brighton Brewery Co.*, 37 L. J. Ch. 278.

(y) *Turquand v. Marshall*, L. R. 4 Ch. 376.

(z) *The London Financial Association v. Kelk*, 26 Ch. D. 107.

(a) The Companies Act, 1867, ss. 4-8.

When they
are personally
liable.

winding-up, (b) the liability of a past director, in his character of director, ceases one year after he has given up the office, and he is not liable in his character of director in respect of debts or liabilities contracted after the period of his holding office. (c) In addition to this they are personally liable (on the ordinary principles of agency) (1) when they exceed their authority; (2) for any misrepresentation of which they are guilty; (3) and to the company itself for any loss arising from unauthorised investments. In the same way a director signing a promissory note, with nothing in itself to exclude his personal liability, will be personally liable upon it. And of course he will also be personally liable if the articles give no power to the directors to accept bills, whether his acceptance is stated to be "on behalf of" the company or not. (d)

Of Acts Ultra Vires.

Ultra vires.

Any transactions outside the scope of the objects of the company as defined by its memorandum are said to be *ultra vires*, and any authority given to the directors of the company is always to be construed as subject to the paramount and inherent restriction that such authority will not justify acts outside the scope of the objects for which the company was formed. (e)

The case of *Tompkinson v. South-Eastern Ry. Co.* (f) affords a good instance of an act *ultra vires*. The stockholders of the South-Eastern Railway passed a resolution at a meeting authorising the directors to subscribe a sum out of the company's funds towards the erection of the Imperial Institute. Mr. Justice Kay, on the application of a shareholder, granted an injunction against this, and held that the proposed subscription was not prevented from being *ultra vires* by the fact that the establishment

(b) The Companies Act, 1867, s. 5, ss. 4.

(c) *Ibid.* ss. 2, 3.

(d) *West London Commercial Bank v. Kitson*, 13 Q. B. D. 360.

(e) *Pickering v. Stephenson*, L. R. 14 Eq. 322. (f) 35 Ch. D. 335.

of the Institute might benefit the company by causing an increase of passenger traffic over the line.

In *Guinness v. Land Corporation of Dublin* (g) the objects of the company were the cultivation of land in Ireland, and other similar purposes specified in the memorandum of association, and to do all other things which the company might deem incidental or conducive to the attainment of any of these objects. The capital was divided into A and B shares. One of the articles of association provided that the capital produced by the issue of B shares should be invested, and that the income, and so far as necessary the capital produced by the issue of B shares, should be applied so as to make good to the holders of A shares a preferential dividend of £5 per cent. on the amounts paid up on the A shares. The Court of Appeal decided that this provision was invalid, on the ground that it purported to make the B capital available for purposes not within the objects of the company, as defined by the memorandum of association.

In *Henderson v. Bank of Australasia* (h) a resolution of the proprietors of a bank authorising the directors to pay a half-yearly pension for five years for the benefit of the family of a deceased officer was held to be within the powers of the company. There was nothing special in the charter of the company to authorise such a payment.

In all companies majorities of shareholders can authorise and sanction matters relating to the management and affairs of the company, provided such matters do not affect its constitution—i.e., are not *ultra vires*; for instance, a power to borrow may be given by special resolution. (i)

Power to sanction matters relating to the management of the company.

Debentures.

One of the most common methods by which a company raises money is the issue of debentures. Debentures usually take the form of a bond or written promise by the

Form of.

(g) 22 Ch. D. 349.

(h) 40 Ch. D. 170.

(i) *Byron v. Metropolitan Saloon Omnibus Co.*, 3 De G. & J. 123; *Peninsular Co. v. Flemming*, 27 L. T. 93.

company, under its common seal, to repay a sum of money advanced, with interest, at a time specified, and subject to certain conditions contained in the document. There are infinite varieties of debentures, but, roughly they may be divided into two classes: (1) Mortgage debentures, which give a charge on all or some part of the company's assets; and (2) Debentures which give no charge, and merely amount to a promise by the company to pay a sum of money. The former class is the more common. Another very simple division is into debentures the holders of which have to be registered in the company's books, and debentures the rights under which pass by delivery. The former class are called "registered debentures," the latter "debentures to bearer."

Debentures to bearer have to be stamped at the rate of 10s. per £100 on the amount secured by them.^(k) Registered debentures are stamped at the rate of 2s. 6d. per £100, also on the amount secured by them.^(l)

Covering deed. Frequently property of a company is conveyed by way of mortgage to trustees, to be held on trust for the debenture holders. Such a deed is called a "covering deed."

Bills of Sale Act, 1882.

The provisions of the Bills of Sale Act (1878) Amendment Act, 1882,^(m) do not apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital, stock, or goods, chattels, and effects of such company.⁽ⁿ⁾

Debenture can consist of one document.

A debenture may consist of one document; it is not necessary that there should be a serial issue of documents to constitute them debentures to obtain the benefit of the above provision.^(o)

Debentures, and bills of sale.

The mortgages or charges of any incorporated company for the registration of which other provisions have been made by the Companies Clauses Act, 1845, or the

(k) Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 21.

(l) The Stamp Act, 1870 (33 & 34 Vict. c. 97).

(m) 45 & 46 Vict. c. 43.

(n) *Ibid.* s. 17.

(o) *Edmonds v. Blaina Furnace Co.*, 36 Ch. D. 215.

Companies Act, 1862, are not within the Bills of Sale Act of 1878.(p)

Where there is a condition in a debenture for the payment of a sum at a time and place certain, the condition is not broken by non-payment at the time, unless the demand for payment is made at the specified place.(q)

Condition as to payment.

Dividends.

Dividends to shareholders can only be paid out of profits. Dividends. Neither the articles of association nor the memorandum can authorise the payment of dividends out of capital.(r) In the case of the *Leeds Building and Investment Co. v. Shepherd (s)*, directors who had unduly relied on their auditor and manager, and who had in consequence allowed dividends to be paid out of capital, were held liable to refund the amount so paid.

A difficult question arises, whether a company is entitled to treat premiums received in respect of the company's own shares as profits. If the proper measure of a company's profits is the surplus of its net assets over and above the amount of its liabilities (including in liabilities the amount of its issued and paid-up capital), then such a mode of treating premiums appears to be justifiable and proper; but the case of *Lee v. Neuchatel Co.(t)* throws doubts upon this method of arriving at profits, and having regard to this, its legality cannot safely be assumed until expressly decided.

Can premiums on shares be distributed as profits?

A company formed for carrying on a business depending on a wasting property is not bound to set aside a sinking fund to meet the deterioration in value of the property.(u)

(p) *In re Standard Manufacturing Co.*, 1891, 1 Ch. 627.

(q) *Thorn v. City Rice Mills*, 40 Ch. D. 357.

(r) *Leeds Estate Building and Investment Co., v. Shepherd*, 36 Ch. D. 787. See also *Trevor v. Whitworth*, 12 App. Cas. 409.

(s) *Supra*.

(t) 41 Ch. D. 1.

(u) *Lee v. Neuchatel Asphalt Co.*, 41 Ch. D. 1.

Reserve fund.

At the same time, it is customary, and certainly is in most cases prudent, to set aside out of the company's profits before paying a dividend a fund called the "reserve fund" for the purpose of meeting contingencies and keeping up the assets of the company to their original value. The articles generally contain power to do this, leaving the exercise of it to the discretion of the directors.

Dividend cannot be "paid" by the issue of debentures.

Where the articles of a company directed a dividend "to be paid" to the members, it was held that they did not authorise debenture bonds of the company to be issued by way of dividend.(x)

Increase and Reduction of Capital.

Increase of capital.

A company may increase its capital by the issue of new shares, whether the memorandum of association gives power to do this or is silent on the point.(y) It may also consolidate and divide its capital into shares of larger amount, or convert its paid-up shares into stock.(z) Any such increase or consolidation must be made by special resolution. Notice of such increase,(a) consolidation, division, or conversion, specifying the shares, must be given to the registrar of joint-stock companies.(b)

Where the memorandum of association permits an increase of shares, a scheme under the articles providing for the increase by preference shares is not *ultra vires*.(c)

Reduction of capital.

A company limited by shares may reduce its capital. The reduction must be authorised by its articles of association, and be by a special resolution; but the resolution for the reduction of capital will not come into operation until an order of the Court confirming the reduction has been obtained.(d)

(x) *Wood v. Odessa Waterworks Co.*, 42 Ch. D. 636.

(y) The Companies Act, 1862, s. 12; and see *In re South Durham Brewery Co.*, 31 Ch. D. 261.

(z) *Ibid.* s. 12.

(a) The Companies Act, 1862, s. 34.

(b) *Ibid.* s. 28.

(c) *In re South Durham Brewery Co.*, 31 Ch. D. 261.

(d) The Companies Act, 1867, s. 9.

The capital of companies is frequently reduced in order to enable the company to pay a dividend. It will be remembered that a company can only pay dividends out of profits, and it seems to follow from this, although there is no express decision upon the point, that a company has made no profits until it has replaced lost capital: *e.g.*, suppose a company with a capital of £50,000 in £10 shares, all fully paid up, has had bad times and lost part of its assets, it may after a time commence to flourish and show considerable profits on its trading account. In such a case it may have assets which could be fairly valued at £25,000, and in order to enable it to pay a dividend it can reduce its £10 shares to £5 each and its £50,000 capital to £25,000, and can then at once commence to pay a dividend.

Reasons for
reducing
capital.

For paying
dividend.

Another frequent cause of a company reducing its capital is the want of fresh money in the concern. Where the company has been for a time unsuccessful it may only need a little more money to turn it into a success, but persons invited to take shares may very reasonably object to take shares on the original footing, and insist on being placed in a more favourable position than the old shareholders. If, for instance, the capital be reduced by a half, each shareholder who takes a share issued after the reduction will get twice as large an interest in the company as if he had taken his share before the reduction.

Want of fresh
capital.

The reduction of capital usually takes one of five forms, namely:

1. Reducing the liability of shareholders; *e.g.*, suppose shares of £10 each have been issued by a company on each of which only £5 has been paid. These shares may be reduced to fully paid-up shares of £5 each.
2. Paying off capital not wanted; *e.g.*, when shares of £10 each have been fully paid, if the company cannot employ its money, the capital can be reduced, and the capital not required returned to the shareholders.
3. Paying back to the shareholders capital not required, on the footing that it can be called up again.

Ways in which
reduction
usually takes
place.

4. Cancelling shares unissued or surrendered.

5. Cancelling capital which is lost or is unrepresented by available assets.(e)

The application to the Court to confirm the reduction is by petition,(f) and, except in the cases mentioned on the next page, the creditors of the company may appear and oppose the proposed reduction.(g) The company must add to its name the words "and reduced" as the last words in its name from the date of the passing of the resolution to such time as the Court may fix.(h)

A company has no power to reduce some of its shares without reducing others of the same class.(i) But the balance of authority at present is in favour of the legality of a company reducing its ordinary shares without reducing its preference shares.(j)

Purchase of
its own shares
by a company

In the case of the *Dronfield Silkstone Co.*(k) the purchasing of shares by the company, not for profit, but for carrying out an arrangement, was considered to be for the benefit of the company, and not a reduction of capital in any sense in which such reduction was pro-

(e) See hereon Palmer's Company Precedents, 5th ed. p. 546, from whence this classification is taken.

(f) The Companies Act, 1867, s. 11. The petition is entitled in the matter of "The Companies Act, 1867," and of the company in question (Gen. Orders, 1862, rule 2), and must be advertised. A list of the creditors must be filed and copies of the list must be kept at the office of the company, and their solicitors and London agents, which copies may be inspected by any one on payment of 1s. Notice of the proposed reduction of capital must be sent to the creditors by prepaid letter, and advertised. The advertisement must state where the list of creditors can be inspected, and the time within which the creditors must send in their claims. An affidavit must be filed that these requisites have been complied with. Creditors may be required to prove their debts in the same way as in a winding-up. The chief clerk then certifies who are the creditors, and how far they have consented to the reduction. The petition cannot be placed on the list of petitions until eight days after the filing of the chief clerk's certificate. Notice of the hearing must be advertised. As to proceedings on a petition to reduce capital, see Gen. Orders, 1868, rules 3-20.

(g) The Companies Act, 1867, s. 13.

(h) *Ibid.* s. 10.

(i) *In re Union Plate Glass Co.*, 42 Ch. D. 513.

(j) *Re Gatling Gun Co.*, 48 Ch. D. 628; *Agricultural Hotel Co.*, 1891, 1 Ch. 396.

(k) 17 Ch. D. 76.

hibited by the Companies Acts; but the authority of this case is considerably weakened by the later case of *Trevor v. Whitworth*.^(l) In that case it was held by the House of Lords that the articles of the company could not authorise the company to purchase its own shares, and that a purchase of them was *ultra vires*. It appears to be very doubtful whether a power to purchase its own shares can be validly given to a company even by its memorandum of association.^(m)

The word "capital" includes paid-up capital; and the power to reduce capital includes a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company. Paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company.⁽ⁿ⁾

Where, however, the reduction of capital does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of paid-up capital—

(a) The creditors are not (unless the Court otherwise directs) entitled to object to the reduction.

(b) The Court may dispense altogether with the addition of the words "and reduced" to the name of the company.^(o)

Shares which have not been taken or agreed to be taken may be cancelled without the sanction of the Court.^(p)

The Court may, if it thinks fit, require the company to publish the reasons of, or any information in regard to, the reduction of its capital, or the causes which led to such reduction.^(q)

(l) 12 App. Cas. 409.

(m) Remarks of Lord Macnaghten in *Trevor v. Whitworth*, *supra*.

(n) The Companies Act, 1877, s. 3.

(o) *Ibid.* s. 4.

(p) *Ibid.* s. 5

(q) The Companies Act, 1879, s. 4.

Shares may be divided into shares of smaller amount.

The capital of the company, or any part of it, may be sub-divided into shares of smaller amount. Such division must be made by special resolution. On any such division the proportion between the amount which is paid and the amount which is unpaid on each share is the same as before its reduction.^(r)

Provision that reserve capital of company not to be called up except in case of winding-up.

It may be provided by special resolution that any portion of the capital which has not been already called up shall not be capable of being called up, except in the event of and for the purposes of the company being wound-up.^(s)

An unlimited company registering as a limited one may, by the resolution assenting to the registration as a limited company, increase the nominal amount of the company's capital by increasing the nominal amount of the shares.

When this is done no part of such increased capital is capable of being called up, except for the purposes of the company's winding-up.

Even when no such increase is resolved upon, the company may by the resolution assenting to registration as a limited company provide that a portion of its uncalled capital shall not be capable of being called up, except for the purposes of the winding-up.^(t)

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

When a company has accumulated profits which may, with the consent of the shareholders, be divided amongst them as dividends or bonus, such profits may, by special resolution, be returned to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The directors have the same power of calling up the money so returned as they have in respect of the rest of the unpaid capital.^(u)

Memorandum of reduction must be registered.

A memorandum showing that all requisites for the reduction of capital have been complied with, must be

(r) The Companies Act, 1867, s. 21.

(s) The Companies Act, 1879, s. 5.

(u) The Companies Act, 1880, s. 3.

(t) *Ibid.*

registered with the registrar of joint stock companies, and the resolution will have no effect until this is done.(x)

A shareholder, instead of taking the money paid in respect of his shares, may require the company to retain it. The company must in such case invest the money. The amount so retained and invested represents the future calls which may be made to replace the capital reduced on the shares, whether the amount obtained on the sale of the whole or such proportion of the investment as represents the amount of any call when made, produces more or less than the amount of such call.(y)

Shareholder may require money returned on his shares to be invested.

In each of these cases it must be remembered that any alteration in the memorandum of association must be authorised by the regulations contained in the articles of association; these may, however, subject to the provisions of the Act and to the conditions contained in the memorandum of association, be altered in general meeting from time to time by special resolution.(z)

Any alteration in the memorandum of association must be authorised by the articles. The articles may be altered by special resolution.

A company cannot purchase its own shares, although the articles, and it seems even the memorandum,(a) contain in plain terms a direct authority enabling it to do so.

Purchase of its own shares by a company.

It has always been the custom of the Stock Exchange not to grant a settling day to a company whose articles or memorandum profess to give it power to purchase or deal in its own shares.(b)

The case of a company purchasing its own shares must not be confused with that of forfeiting shares for non-payment of calls. In the case of forfeiture, the shares are obtained adversely to the shareholder and without the company paying anything for them; this is undoubtedly legal, although, as the full amount has not been paid in respect of the shares, the company loses the liability (probably worth nothing) of the shareholder.

Forfeiture.

(x) The Companies Act, 1880, s. 4.

(y) *Ibid.* s. 5.

(z) The Companies Act, 1862, s. 50.

(a) *Trevor v. Whitworth*, 12 App. Cas. 409.

(b) Rules and Regulations of the Stock Exchange, Rule 131.

Other Matters relating to Management.

Contracts
made by a
company.

With regard to contracts made on behalf of companies, the Companies Act, 1867,^(c) provides that companies may be able to contract, by their duly authorised agents, in exactly the same way as individuals; that is—(1) Where the contract is required by law to be in writing under seal,^(d) it must be in writing under the common seal of the company; (2) Where a contract is required by law to be in writing and signed by the parties to be charged therewith, it may be signed by the duly authorised agent of the company; and (3) Where the contract would by law be valid although by parol only and not reduced into writing, it may be made by parol by any one having the express or implied authority of the company to make it; and that the contract may in each case be varied or discharged in the same way as it may be made.

Resolutions.

The Act of 1862 provides for three sorts of resolutions: an *ordinary* resolution, which is that of a simple majority of members at a duly convened and constituted meeting; a *special* resolution; and an *extraordinary* resolution.

Special
resolution.
Definition.

A special resolution may be briefly defined as a resolution passed by three-fourths of the members present at a general meeting, of which notice, specifying the intention to propose such resolution, has been duly given, and confirmed by a subsequent resolution, passed by a majority at a subsequent general meeting, of which notice has been duly given, held at an interval of not less than fourteen days^(e) nor more than one month from the date of the first meeting.^(f) A fresh notice should be given for

(c) 30 & 31 Vict. c. 131, s. 37.

(d) Under the Companies Seal Act, 1864 (27 & 28 Vict. c. 19), a company formed under the Act of 1862 may have an official seal for use in foreign countries, and may employ a local agent to affix the same to any deed, contract, or other instrument to which the company is a party in such foreign country.

(e) This means fourteen clear days, exclusive of the respective days of meeting: *Railway Sleepers Supply Co.*, 29 Ch. D. 204.

(f) The Companies Act, 1862, s. 51.

the second meeting.(g) A copy of every special resolution must be printed, published, and forwarded to the registrar of joint stock companies for registration ;(h) and a copy of every special resolution for the time being in force must be annexed to or embodied in every copy of the articles of association issued after the passing of the resolution.(i)

An extraordinary resolution is a resolution passed by three-fourths of the members present at a general meeting, of which notice specifying the intention to propose such resolution has been duly given, but needs no confirmation.(k) In other words, an extraordinary resolution is the first step of a special resolution.

Unless a poll on a special resolution is demanded by at least five members, the declaration of the chairman that any resolution has been carried is to be deemed conclusive evidence of the fact.(l)

The chairman at a general meeting has *prima facie* authority to decide all incidental questions arising at the meeting, and which require immediate decision, and his decision as entered in the minute-book is *prima facie* correct.(m)

Where a poll is demanded, in computing the majority reference is to be had to the number of votes to which each member is entitled by the regulations of the company.(n) Voting by proxy will be allowed unless expressly precluded by the articles of association. By the Stamp Act, 1870,(o) proxies for voting are liable to a stamp duty of one penny, and are only available at a specified meeting, or at an adjournment thereof.

(g) *Alexander v. Simpson*, 43 Ch. D. 139.

(h) The Companies Act, 1862, s. 53.

(i) *Ibid.* s. 54.

(k) *Ibid.* s. 129.

(l) *Ibid.* s. 51. The section seems to override, for the purpose of a special resolution, any provision in the company's articles dealing with a poll.

(m) *Indian Zoedone Co.*, 26 Ch. D. 70.

(n) The Companies Act, 1862, s. 51. A usual voting power of members is one vote for every share up to ten, one for every additional five shares up to one hundred, and one for every additional ten shares beyond the first hundred. No member can vote unless all calls due from him have been paid.

(o) 33 & 34 Vict. c. 97, s. 102.

Statutory
meeting.

A general meeting of a company must be held within four calendar months after its registration, and if such meeting is not held, the company is liable to penalties, as are also the directors who know of the default.(p)

General
meetings.

A general meeting of every company must be held once at the least in every year.(q) This means every calendar year, therefore it may happen that more than twelve months may intervene between two general meetings.(r)

Registered
office.

Every company must have a registered office,(s) and must give notice to the registrar of joint stock companies of any change thereof;(t) by carrying on business without having such office, or by not giving notice of a change of office, it incurs a penalty of not exceeding £5 per day.(u)

Name of
company to be
painted up.

Every limited company must keep its name conspicuously and legibly painted or affixed on the outside of every office or place in which the business of the company is carried on, and have its name legibly engraved on its seal, and mentioned in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.(x)

Register of
mortgages.

It must also keep a register of all mortgages and charges affecting the property of the company.(y) Non-registration gives rise to penalties, but does not invalidate the mortgage, even if the mortgagee is a director.(z) This register, which must contain a short description of the property charged, the amount of charge and name of

(p) The Companies Act, 1867, s. 39.

(q) The Companies Act, 1862, s. 49.

(r) *Gibson v. Barton*, L. R. 10 Q. B. 329.

(s) The Companies Act, 1862, s. 39.

(t) *Ibid.* s. 40.

(u) *Ibid.* ss. 39 and 40. The penalty under these and the 19th sections is imposed on the company alone, but in some other sections of the Act (ss. 25, 27, 32, and 34) a penalty is also imposed on the directors or managers.

(x) The Companies Act, 1862, s. 41. Various penalties are provided by the Act for breach of this provision. See s. 42.

(y) *Ibid.* s. 43.

(z) *Wright v. Horton*, 12 App. Cas. 371.

mortgagee, is open to the inspection of any creditor or member of the company.(a)

No express power is required to authorise a company to mortgage its property, and it may do so as freely as an individual, unless prevented by its articles of association from doing so.(b) But it has no power to mortgage or charge future calls unless specially authorised by its articles to do so.(c) An authority contained in the memorandum of association to mortgage all or any part of the property and rights of a company includes a right to mortgage uncalled capital.(d)

Powers of
mortgaging
property of
a company.

If the registrar of joint stock companies has reasonable cause to believe that a company is not carrying on business or in operation, he must send to the company by post a letter inquiring if it is carrying on business or in operation.

Power to
strike the
name of a
defunct com-
pany off the
register.

If he receive no reply within a month, he sends, within fourteen days after the expiration of the month, a registered letter to the company, referring to the first, and stating that no answer has been received thereto, and that if an answer is not received to the second letter within one month a notice will be published in the Gazette with a view to striking the name of the company off the register.

If the registrar receives an answer that the company is not carrying on business, or receives no answer within a month from the second letter, he publishes in the Gazette and sends to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will be struck off the register and the company dissolved, unless cause is shown to the contrary.(e)

(a) The Companies Act, 1862, s. 43.

(b) *Bath's Case*, 8 Ch. D. 334.

(c) *Phoenix Bessemer Steel Co.*, 32 L. T. 854; 44 L. J. Ch. 683; *Re Pyle Works*, 44 Ch. D. 534; see also Buckley, 6th ed. p. 167, and cases there noted.

(d) *In re Patent Ivory Manufacturing Co.*, 38 Ch. D. 156.

(e) The Companies Act, 1880, s. 7, ss. 1-4.

Service of writs and other proceedings upon a company.

In an action against a company (formed under the Companies Act, 1862), any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.^(f) The document must be posted in due time to admit of its being delivered within the period prescribed for its service. In proving service of the document it is sufficient to prove that the document was properly directed and was put as a prepaid letter into the post-office.^(g)

Upon a foreign corporation.

A writ of summons against a foreign corporation having a branch office in England may (when the cause of action has arisen in England) be served on the head officer in England of the corporation.^(h) The booking-clerk of a Scotch railway was held not to be a "head officer" for this purpose, although he was the only official at the place of business in England,⁽ⁱ⁾ but a duly appointed superintendent appears to be a "head officer" on whom service may be made.^(k)

(f) The Companies Act, 1862, s. 62. For service on companies formed, under other Acts, see Chap. I.

(g) *Ibid.* s. 63.

(h) *Newby v. Van Oppen*, L. R. 7 Q. B. 293.

(i) *Mackereth v. Glasgow & S. W. Ry. Co.*, L. R. 8 Ex. 149.

(k) *R. M. S. Packet Co. v. Braham*, 2 App. Cas. 381.

CHAPTER V.

THE DIFFERENT METHODS OF WINDING-UP COMPANIES.

THREE kinds of winding-up are provided by the Companies Acts, 1862 to 1890 :—

1. Winding-up by the Court.
2. Voluntary winding-up.
3. Winding-up subject to the supervision of the Court.

The general scheme is the same in all these methods. The *modus operandi* of the Act is to change the directors for officers called “ Official Liquidators ” and “ Liquidators,” and to give them the fullest powers to convert the property of the company into money. This money is then distributed amongst the creditors of the company, and any balance is divided amongst its members. The great distinction between compulsory or winding-up by the Court, and voluntary winding-up, is, that in the first case the official liquidators, or liquidators, are officers appointed by, and are agents of, the Court, and if the company is insolvent are trustees only for the creditors ; whereas, in the second class they are appointed by and are trustees of the company, and the voluntary winding-up need not necessarily imply insolvency, as it is very frequently adopted as a scheme for dissolving the company, for the purpose of changing its objects or constitution, or of amalgamation with some other company. In the case of a winding-up subject to the supervision of the Court the liquidators are appointed by the company, but are subject to the control of the Court.

Distinction
between com-
pulsory and
voluntary
winding-up.

Winding-up
subject to
supervision.

V CHAPTER VI.

WINDING UP BY THE COURT.

COURTS HAVING JURISDICTION TO WIND UP COMPANIES, AND THEIR POWERS OF TRANSFER, ETC.—SERVICE AND EXECUTION OF PROCESS—THE WINDING-UP PETITION—THE OFFICIAL RECEIVER AND HIS DUTIES PRIOR TO THE APPOINTMENT OF A LIQUIDATOR—THE STATEMENT OF AFFAIRS OF THE COMPANY—REPORTS OF OFFICIAL RECEIVER—THE PUBLIC EXAMINATION OF PROMOTERS AND OFFICERS OF THE COMPANY—THE LIQUIDATOR: HIS POWERS, DUTIES, REMUNERATION, ETC.—THE COMMITTEE OF INSPECTION—PROOF OF DEBTS—ADMISSION AND REJECTION OF PROOFS—PROXIES—GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES—THE LIST OF CONTRIBUTORIES—CALLS—DIVIDENDS—UNCLAIMED DIVIDENDS—BOOKS OF ACCOUNT—STATEMENTS AS TO PENDING LIQUIDATIONS—THE ORDER IN WHICH COSTS ARE PAYABLE OUT OF THE ASSETS OF THE COMPANY—TAXATION OF COSTS, CHARGES AND EXPENSES—RELEASE OF LIQUIDATOR.

Of the three methods of winding up of companies, winding-up by the Court is the one of most importance.

A company may be wound up by the Court—

When a company may be wound up by the Court.

1. Whenever the company has passed a special resolution requiring the company to be wound up by the Court:
2. Whenever the company does not commence its business within a year from its incorporation,

- or suspends its business for the space of a whole year : (a)
3. Whenever its members are reduced in number to less than seven : (b)
 4. Whenever the company is unable to pay its debts :
 5. Whenever the Court is of opinion that it is just and equitable (c) that the company should be wound up. (d)

As the creditor is precluded from suing the individual members of the company, it was necessary to provide him with a summary method of compelling the company either to pay his debt or be wound up ; it is accordingly provided by a subsequent section that a company shall be deemed unable to pay its debts :—

When a company is to be deemed unable to pay its debts.

1. Whenever a creditor (by assignment or otherwise) to whom the company is indebted, at law or in equity, in a sum exceeding £50, has served on the company, by leaving the same at their registered office, a demand requiring payment of the sum due, and the company has for three weeks neglected to pay, secure, or compound for the same :
2. Whenever execution or other process, issued on

(a) The winding-up in this case is not obligatory, but discretionary with the Court : *In re Middlesbrough Assembly Rooms Company*, 14 Ch. D. 104.

(b) If the number of members is reduced below seven, and the company continues business for six months afterwards, each and every member who is cognisant of the fact is liable for the whole of the debts of the company : The Companies Act, 1862, s. 48.

(c) As, for instance, where the company has abandoned the business for which it was formed and embarked upon a new and entirely different business : *Re Crown Bank*, 44 Ch. D. 634.

(d) The Companies Act, 1862, s. 79. An unregistered company may be wound up : (a) Whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs ; (b) Whenever the company is unable to pay its debts ; (c) Whenever the Court thinks that it is just or equitable that it should be wound up : The Companies Act, 1862, s. 199, ss. 3. As to the winding-up of unregistered companies, see ss. 199-204.

a judgment, decree, or order obtained in any Court against the company, is returned unsatisfied in whole or in part:

3. Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.^(e)

Courts having Jurisdiction to wind up Companies, and their powers of transfer, &c.

Our Courts have no jurisdiction to wind up a foreign company which has carried on business in England by means of agents, but has no branch office of its own here.^(f)

Courts having jurisdiction to wind up companies.

The Courts having jurisdiction to wind up companies^(g) in England and Wales are—

1. The High Court.
2. The Chancery Courts of the Counties Palatine of Lancaster and Durham.
3. The County Courts.
4. The Stannaries Courts.^(h)

Applications to wind up a company, or continue the winding-up of a company under the supervision of the Court, must be made—

When the application to wind up is to be made to the High Court.

- (a) To the High Court when the capital exceeds £10,000.
- (b) To the Palatine Court or High Court if the company is situate within the jurisdiction of

(e) The Companies Act, 1862, s. 80. The cases in which an unregistered company will be held to be unable to pay its debts are practically the same. See s. 119, sub-s. 4.

(f) *Lloyd Generale Italiano*, 29 Ch. D. 219.

(g) A partnership, association, or company, corporate or registered under, the Companies Acts, cannot be adjudged bankrupt: Bankruptcy Act, 1883, s. 123.

(h) The Companies Act, 1890, s. 1, ss. 1.

either of the Palatine Courts, and its capital exceeds £10,000. To the Palatine Courts.

(c) To the County Court in whose jurisdiction the registered office of the company is situate, if the capital is less than £10,000. To the County Court.

(d) To the Stanneries Court, if the company is formed to work mines within the Stannaries, and is not shown to be actually working mines, or to be engaged in an undertaking outside those limits, or to be under a contract to do so, whatever the capital of the company may be. To the Stanneries Court.

Capital for the above purposes means capital either paid up or credited as paid up. Capital. (i)

The Lord Chancellor may by order exclude a County Court from having jurisdiction to wind up companies, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or another County Court. Certain County Courts may be excluded. (k)

A County Court cannot have jurisdiction to wind-up companies unless it has jurisdiction in bankruptcy. (l)

The Lord Chancellor has, under section 2 of the Companies (Winding-up) Act, 1890, power to direct that the jurisdiction of the High Court in winding-up companies shall be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as he may assign to exercise that jurisdiction, or by the judge who for the time being exercises the bankruptcy jurisdiction of the High Court. Judges of the High Court who are to exercise the jurisdiction in winding-up companies. (m)

(i) The Companies Act, 1890, s. 1, ss. 3.

(k) The Companies Act, 1890, s. 1, ss. 5. By an order of the 29th Nov. 1890, the Lord Chancellor has excluded all County Courts which have not bankruptcy jurisdiction, and has attached the districts of such County Courts for the purpose of winding-up companies to the Court to the districts of which they are attached for bankruptcy purposes.

(l) *Ibid.*

(m) Cave, J., now exercises the bankruptcy jurisdiction of the High Court. See sec. 90, of the Bankruptcy Act, 1883. By an order of the 29th Nov.

Powers of
Courts.

The County Courts Palatine and Stannaries Courts, and their officers, have for the purposes of winding-up companies precisely the same powers, within their jurisdiction, as the High Court and its officers.(n)

Proceedings
commenced in
a wrong
Court.

The general effect of section 1 of the Companies (Winding-up) Act, 1890, has been given in the preceding remarks. Sub-section 7, the concluding paragraph of that section, is as follows: "Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court."

Powers of
transfer.

Full powers of transfer from one Court to another are given by the Companies (Winding-up) Act, 1890, and it appears to be the intention of the Act that if proceedings are commenced in a wrong Court they shall not be abortive, but the proceedings shall be transferred to and continued in another Court.

At any stage.

The winding-up of a company, or any proceedings therein, may at any time and at any stage be transferred from one Court to another.(o)

Application by
parties un-
necessary.

The transfer can be made either with or without application by any of the parties to the proceedings.(p)

The proceedings can be retained in the Court in which they are commenced, although it may not be the Court in which they ought to be commenced.(q)

Who can
transfer.

The power of transfer may be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction to wind-up companies, or, as regards any case within the jurisdiction of any other Court, by the judge of that Court.(r)

Transfer from
an inferior
Court to the
High Court.

The transfer from a Court other than the High Court to the High Court has to be made by a judge of the

1890, the Lord Chancellor has ordered that the jurisdiction of the High Court shall be exercised by the judges of the Chancery Division to whom for the time being chambers are attached. Romer, J., is at present the only Chancery judge without chambers.

(n) The Companies Act, 1890, s. 1, ss. 6.

(o) *Ibid.* s. 3, ss. 1.

(p) *Ibid.*

(q) *Ibid.*

(r) *Ibid.* s. 3, ss. 2.

High Court, and when the transfer is made the winding-up is assigned to him.^(s)

The judge of any Court having jurisdiction to order the winding-up of a company, other than the High Court or Palatine Court, can order the transfer of any proceedings to another Court, such other Court not being the High Court or a Palatine Court.^(t)

Transfer from one inferior Court to another.

Notice of any application for a transfer has to be given to the Official Receiver before the hearing.^(u)

Notice to Official Receiver of proposed transfer.

On an order for transfer being made, the person on whose application it was made must lodge a sealed copy of the order with the Chief Clerk if the transfer is to the High Court, and with the Registrar if the transfer is to any other Court,^(x) the records are then transferred from the one Court to the other,^(y) and notice of the transfer is given by the official receiving the records to the Official Receiver of the Court to which the transfer is made, and the Official Receiver gives notice of the transfer to the Board of Trade.^(z)

Proceedings after transfer.

In the High Court all applications are to follow the old practice, and be heard in Court or in Chambers, in accordance with the old practice, except—

Proceedings in the High Court.

- (a) Where the practice is expressly altered by the Companies (Winding-up) Act, 1890, or Rules, 1890;
- (b) Where the judge shall, by any general or special directions, order the contrary;
- (c) That appeals from the Official Receiver and Board of Trade and liquidator must be brought by notice of motion to the Court, pursuant to the Rules of the Supreme Court with reference to motions.^(a)

Appeals from the Official Receiver, &c.

In Courts other than the High Court the following matters and applications must be heard in open Court :—

Proceedings in other than the High Court.

^(s) Rules of 1890, Rule 8.

^(t) *Ibid.* Rule 9.

^(u) *Ibid.* Rule 10.

^(x) *Ibid.* Rule 11.

^(y) *Ibid.* Rule 13.

^(z) *Ibid.* Rule 14.

^(a) *Ibid.* Rule 4.

- (a) Petitions.
- (b) Public examinations.
- (c) Applications under section 167 of the Companies Act, 1862.
- (d) Applications to rectify the register.
- (e) Appeals from the Official Receiver and Board of Trade.
- (f) Appeals from any decision or act of the liquidator.
- (g) Applications relating to the admission or rejection of proofs.
- (h) Proceedings under sect. 10 of the Companies (Winding-up) Act, 1890.(b)

In Courts other than the High Court the judge can adjourn matters from Chambers to Court, or *vice versa*, and he must do so if all the contending parties require it.(c)

Questions arising in proceedings in a County Court or the Stannaries Court may be determined on special case.

If any question arises in any winding-up proceeding in a County Court or in the Stannaries Court which all the parties to the proceeding, or which one of them and the judge of the Court, may desire to have determined in the first instance in the High Court, the judge must state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, are to be transmitted to the High Court for the purposes of the determination.(d)

Appointment of a person to take down evidence.

On any examination held under the Companies Acts, 1862 to 1890, or under the Companies Winding-up Rules, 1890, a person may be appointed to take down the evidence of any person examined, in shorthand or otherwise.

How made.

The appointment is to be made by the Court or officer before whom the examination is held, if the Court or officer be of opinion that it is desirable.

- (b) Rules of 1890, Rule 5. (c) *Ibid.* Rule 6.
- (d) The Companies Act, 1890, s. 3, ss. 3.

If the application is made by the Official Receiver he nominates a person for this purpose, and the person so nominated is to be appointed, unless the Court or officer holding the examination otherwise orders. Who nominates such person.

The person so appointed is paid a sum not exceeding one guinea a day. In addition, if the Court appoints a shorthand writer, a sum not exceeding eightpence per folio of ninety words for any transcript of the evidence required must be paid. Payment of the person appointed.

The payment of such person is made by the party at whose instance he was appointed, or out of the assets of the company, as may be directed by the Court. Who liable for payment. (e)

A person examined before a registrar or other officer of the Court, who has no power to commit for contempt of Court, can be punished if he refuses to answer, in the same way as if the default was made before the judge himself. Procedure to commit witnesses making default in answering before an officer.

The power arises where the person examined refuses to answer to the satisfaction of the officer a question which the latter allows to be put.

The course of procedure is as follows :—

- (a) The officer must report such refusal to the judge.
- (b) The report must be in writing. It must set forth the question put, and the answer (if any) given. No affidavit is necessary.
- (c) Before the conclusion of the examination the officer must name the time when and place where the default will be reported to the judge.
- (d) If the judge is sitting at the time when the default is made it may be reported to him immediately.
- (e) On receiving the report the judge may take such action thereon as he may think fit. (f)

Applications for costs should be made at the hearing Applications for costs.

(e) Rules of 1890, Rule 16.

(f) *Ibid.* Rule 17.

of the proceedings; but if a party to or person affected by a proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding:

- (a) He must serve notice of the application on the Official Receiver and liquidator (if any).
- (b) They may appear and oppose.
- (c) He will get no costs of the application unless the Court is satisfied that the application could not have been made at the time of the proceeding.(g)

Transfer of actions by or against a company being wound up.

A judge of the High Court who makes an order for the winding-up of a company has power to order the transfer to himself of any cause or matter pending in any other Court or Division brought or continued by or against the company.(h)

Right of contributories and creditors to attend the proceedings.

Every contributory and every creditor whose proof has been admitted is entitled at his own cost to attend the liquidation proceedings, and to have notice of all such proceedings as he by a written request desires to have notice of. The Court can order a person attending to pay any extra costs it considers he has caused.(i)

Service and Execution of Process.

Service by bailiff or other officer usually unnecessary.

No order, summons, petition, or notice need be served by a bailiff or officer of the Court, unless:

- (a) It is specially required by the Companies Acts, 1862 to 1890, or the Winding-up Rules of 1890, to be so served; or
- (b) The Court specially requires any particular proceeding to be so served.(k)

Service of documents through the post.

All notices and other documents, for the service of

- (g) Rules of 1890, Rule 26.
- (i) Rules of 1890, Rule 173.

- (h) R. S. C. 1883, Ord. xlix. Rule 5.
- (k) *Ibid.* Rule 20.

which no special mode is directed, may be sent by pre-paid post letter to the last known address of the person served therewith.

If sent by post, the notice or document is to be considered as served at the time when the same ought to be delivered in the due course of post, by the post-office, and notwithstanding the same may be returned by the post-office. ^{When to be deemed to be served.} (l)

The Winding-up Petition.

Any application for the winding-up of a company must be by petition, which may be presented: (1) By the company; (2) By one or more creditors; (3) By one or more contributories of the company, or by all or any of the above parties together or separately. ^{Petition. Who may petition.} (m)

In the case of a life assurance company a petition may also be presented by a policy-holder on the ground of the company's insolvency. (n)

In order, however, to prevent a person buying shares solely for the purpose of presenting a petition for winding-up, it is provided by the Companies Act, 1867, (o) that no contributory shall be capable of presenting a petition for winding-up a company (except in the event of the members being reduced to less than seven), unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held (p) by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have ^{Contributory.}

(l) Rules of 1890, Rule 21.

(m) The Companies Act, 1862, s. 82. A fee of £2 has to be paid on presentation of the petition. This includes the drawing up and entering of the order: Rules of February, 1891, Rule 9,

(n) 33 & 34 Vict. c. 61, s. 21.

(o) 30 & 31 Vict. c. 131, s. 40.

(p) The word "held" used in the section has no technical meaning, and a contributory may present a petition although during a part of the six months the contributory's estate was vested in a trustee under a liquidation petition presented by the contributory: *Wala Wynaad Gold Mining Co.* 21 Ch. D. 849.

devolved upon him through the death of a former holder. But where a share has, during the whole or any part of the six months, been held by or registered in the name of a wife of a contributory, either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the contributory, such share is deemed to have been held by and registered in the name of the contributory. A contributory, however, who has not paid a call made upon him, cannot present a winding-up petition.(q)

A creditor may petition although his debt is less than £50.

It is not necessary (except where the creditor's right to a winding-up order arises from non-payment of his debt for three weeks after demand) that the petitioning creditor's debt should amount to £50.

The assignee of a debt can petition(r) as though he had been the original creditor.

A holder of fully paid-up shares may petition. Security for costs.

A holder of fully paid-up shares has been held to be a contributory for the purpose of presenting a petition.(s) Where a petitioner resides out of the jurisdiction he can be compelled to give security for costs.(t) A creditor who has presented a petition does not become a trustee for the other creditors, and is not bound to bring the petition to a hearing; but if he proceeds with a petition after an offer has been made to satisfy his debt and costs, he will be liable for all costs incurred after such offer.(u)

Petitioner dominus litis.

In *The Paris Rink Co.*(x) a creditor presented a petition. Before the petition was heard he sold his debt and the right to proceed with a petition to a shareholder. The shareholder obtained leave to amend by making

(q) *Re The European Life Assurance Society*, L. R. 10 Eq. 403; *In re Steam Stoker Co.*, L. R. 19 Eq. 416; *In re Norwich Provident Insurance Society v. Hesketh*, 49 L. J. Ch. 187.

(r) *London and Birmingham Alkali Co.*, 1 D. F. & J. 257.

(s) *National Savings Bank Association*, L. R. 1 Ch. 574.

(t) *Home Assurance Co.*, L. R. 12 Eq. 112; *Ex p. Seidler*, 12 Sim. 106; *Royal Bank of Australia, Ex p. Latta*, 3 De G. & Sm. 186.

(u) Buckley on the Companies Acts, 6th ed. p. 226.

(x) 5 Ch. D. 959.

himself a co-petitioner. V.-C.Hall decided that the sale of a right to proceed with a winding-up petition ought not to be allowed, and dismissed the petition.

The petition must be entitled, In the Matter of the Companies Acts, 1862 to 1890, and of the company sought to be wound up, and must be in a form given in the Appendix to the Companies Winding-up Rules, 1891, with such variations as circumstances may require.^(y) It should contain in detail sufficient to enable the Court to see that a winding-up order should be made. And it should further show, if presented by a contributory, that section 40 of the Act of 1867 has not been violated.^(z)

Petition—
how entitled.

What it must
show.

The petition must be verified by affidavit. The affidavit must be made by the petitioner, or one of the petitioners, if more than one; or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and must be sworn after and filed within four days after the petition is presented. The affidavit is sufficient *prima facie* evidence of the statements in the petition.^(a)

Affidavit in
support.

The petition must be advertised seven clear days before the hearing, once in the London Gazette, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs, in the case of a company whose registered office, or, where it has no such office, then whose principal or last known place of business, is or was situate within ten miles of the principal entrance of the Royal Courts of Justice.

Advertisement
of petition.

In the case of any other company it must be advertised

Country
Company.

^(y) Rules of 1891, Rules 7 and 33, Forms 12 and 13. These forms are given in the Appendix.

^(z) *I.e.*, that the contributory has held his shares for six months out of the previous eighteen months, or that they have devolved upon him through the death of a former owner.

^(a) Rules of 1890, Rule 36. Every contributory or creditor of the company is entitled to be furnished by the solicitor of the petitioner with a copy of the petition within twenty-four hours after requiring the same, on paying the rate of fourpence per folio of 72 words for such copy. (Rule 37.)

once in the London Gazette, and once at least in one local paper circulating in the district where such registered office, or principal or last known place of business, is or was situate.(b)

What it must contain.

The advertisements must state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any). It must also contain a note at the foot, stating that persons intending to appear on the hearing must send notice of their intention to do so to the petitioner.(c)

Service.

Unless presented by the company the petition must be served at the registered office, if any; of the company, and if no registered office, then at the principal or last known place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members as the Court may direct; and every petition for the winding-up of a company, subject to the supervision of the Court, must be served on the liquidator (if any) appointed for the purpose of winding-up the affairs of the company.(d)

Duty of petitioner before hearing.

After the presentation of the petition, and not less than two days before the day appointed for the hearing, the petitioner must attend before the registrar and must satisfy him :

- (a) That the petition has been duly advertised.
- (b) That the affidavit verifying the petition and affidavit of service (if any) have been duly filed.
- (c) That the provisions of the rules as to petitions for winding-up companies have been duly complied with by the petitioner.(e)

(b) The Rules of 1890, Rule 34.

(c) Rules of February 1891. For form of note see form of advertisement, Form 2 to those Rules.

(d) Rules of 1890, Rule 35.

(e) Rules of February 1891, Rules 1 and 4. For form see Forms 1 and 3 to those Rules.

All persons served with the petition, and also all contributories and creditors, but apparently no other persons, are entitled to appear on the petition and to support or oppose it.^(f)

Persons entitled to appear on hearing.

Persons intending to appear must serve on the petitioner, or send by post to the address stated in the advertisement of the petitioner, a notice of their intention. The notice must be signed by the person or his solicitor, and must be served or posted so as to reach the address not later than 6 o'clock in the afternoon of the day previous to the day appointed for hearing. A list of the persons intending to appear has to be prepared by the petitioner for the Court and handed to the registrar.^(g)

Notice by persons proposing to appear.

The Court usually gives the carriage of the order to the petitioner.

Carriage of winding-up order.

Where several petitions are presented under circumstances which justify their presentation, the practice is to make one order on all the petitions, so that each petitioner may obtain his costs.^(h)

Where a winding-up order is made on two petitions, the judge has a discretion as to which of the petitioners shall have the carriage of the order.⁽ⁱ⁾

The petitioner's costs are a first charge on the estate, and must be paid in full in priority to all other claims. If the petitioner is a shareholder, and subsequently becomes liable as a contributory in respect of calls in the winding-up, he is entitled to his costs without any set-off from the company for monies due from him in respect of such calls, as the costs are in fact due to his solicitor.^(k)

Costs of petition.

With respect to the costs of persons who appear to support or oppose a petition, although not served with it, there appears to be no settled rule. But in the

Costs of persons appearing on the petition.

(f) Lindley on Company Law, p. 658.

(g) Rules of February 1891, Rules 3 and 4. For form see Forms 1 and 2 to those Rules.

(h) Buckley, 6th ed. p. 225.

(i) *Re N. Cunningham & Co.* 53 L. J. Ch. 246.

(k) Buckley, 6th ed. p. 251.

absence of special circumstances the rule appears to be : (1) To allow one set of costs to those contributories and one set to those creditors who (without being served) appear on the petition and support the view which ultimately prevails—*i.e.*, support a successful or oppose an unsuccessful petition ; (2) To give no costs to those who (not being served) support an unsuccessful or oppose a successful petition : but (3) To make a petitioner pay the costs of persons who appear to answer and succeed in refuting unfounded charges made against them.^(l)

The general but certainly not an inflexible rule where a winding-up petition is dismissed on the application of the petitioner, is that shareholders and creditors appearing either to oppose or support the petition are entitled to their costs. As will be seen from the cases cited below, the practice on the point is by no means settled.^(m)

Costs of a
second
petition.

A petitioner who presents a second petition in ignorance of a first petition having been presented, is entitled to his costs up to the time when he has notice of the first petition. If he proceeds with the petition after such notice, he will get no further costs unless he has good reason to suppose that the first petition is not presented *bond fide*, in which case he is justified in proceeding, and may be allowed his costs.⁽ⁿ⁾

The Court has jurisdiction to restrain by injunction a person claiming to be a creditor from presenting a petition, where there is a *bond fide* dispute about the debt and the company is solvent.^(o) It appears that

^(l) Lindley on Company Law, p. 658. See Gen. Order, November, 1862, Rules 60-62.

^(m) *Nacupai Gold Mining Co.*, 28 Ch. D. 732, overruling *Jablochhoff Electric Light and Power Co.*, W. N. 1883, 189. *In re District Bank of London*, 35 Ch. D. 576 ; but see *In re North Brazilian Sugar Factories*, 56 L. T. 229 ; *In re Paper Bottle Co.*, 40 Ch. D. 52 ; and *In re Criterion Gold Co.*, W. N. 1889, 46.

⁽ⁿ⁾ *In re General Financial Bank*, 20 Ch. D. 276.

^(o) *Cerle Restaurant Castiglione Co. v. Lavery*, 18 Ch. D. 555 ; *Niger Merchants Co. v. Copper*, 18 Ch. D. 557 n. ; *Gold Hill Mines*, 23 Ch. D. 210.

where a winding-up petition is dismissed, the Court has no power to give the petitioner his costs of the petition.(p)

If after presentation of a winding-up petition the petitioner becomes bankrupt, he must give security for the costs of the petition.(q)

In petitions presented by a creditor, as the creditor cannot obtain payment of his debt, the Court is bound, *ex debito justitiæ*, to make a winding-up order,(r) but it is only *ex debito justitiæ* that a creditor obtains his order when there is some chance of his getting paid by means of it. If there are no assets that a winding-up order can reach (as if all the assets are fully charged in favour of debenture-holders) and other creditors oppose, an immediate order may be refused,(s) or the order may be refused altogether.(t)

It is only as between the company and the creditor that the latter, if he cannot obtain payment of his debt, is entitled to a winding-up order,(u) and if the bulk of the creditors prefer to continue a voluntary winding-up, the Court will give weight to their wishes, and will, instead of making a winding-up order, make an order to continue the voluntary winding-up under supervision ;(x) or if there is no voluntary winding-up, the Court may refuse to make any order if the majority of the creditors so desire.(y)

When a winding-up order is made(z) the registrar of

(p) *Tyneside Permanent Benefit Building Society*, W. N. 1885, 148.

(q) *Carta Para Mining Co.*, 19 Ch. D. 457.

(r) *Per* Lord Cranworth in *Bowes v. The Hope, &c., Society*, 11 H.L.C. 389.

(s) *St. Thomas's Dock Co.*, 2 Ch. D. 116; *Uruguay Central and Hygueritas Ry. Co. of Monte Video*, 11 Ch. D. 372; *In re Chapel House Colliery Co.*, 24 Ch. D. 259.

(t) *The Company or Fraternity of Free Fishermen of Faversham*, 36 Ch. D. 329.

(u) *London Suburban Bank*, L. R. 6 Ch. 641.

(x) *West Hartlepool Co.*, L. R. 10 Ch. 618.

(y) *Langley Mill Co.*, L. R. 12 Eq. 26.

(z) The documents necessary to draw up the order must be left with the Registrar at latest on the day following the day on which the order was pronounced. Rules of 14th February 1891, Rule 6. As the day on which the order is pronounced is usually a Saturday, a literal compliance with this rule is in most cases impossible.

Security for costs.

Petitions presented by a creditor;

Winding-up orders—duty of registrar.

the Court forwards three copies of the order to the proper official receiver by post.(a)

Notices at foot of order.

The order contains a notice at its foot that it is the duty of the secretary or chief officer of the company, and such other persons as are liable to make out or concur in the statement of affairs of the company, to attend on the official receiver at a place named in the notice.(b)

Service on secretary, &c., of company.

The official receiver serves a sealed copy of the order on the secretary or other chief officer of the company, and he also gives notice to the Board of Trade of the order, and the Board of Trade advertises it.(c) The official receiver also sends notice of the order to such local paper as the Board of Trade directs.(d)

Advertisement of winding-up order.

A winding-up order may be discharged on payment of the petitioner's debt, if no other creditor appears.(e)

Petitions presented by a contributory.

In petitions presented by a contributory, however, the Court is bound to exercise a discretion.(f)

Petition a *lis pendens*.

A petition for winding-up a joint stock company is a *lis pendens*, and will bind the property of the company if duly registered.(g)

Appeals.

Any appeal from an order or decision made in the winding-up of a company must be brought within twenty-one days.(h)

The appeal lies to the Court of Appeal. Where a limited company alone appeals from a winding-up order, without joining any one personally responsible for costs, it will generally be ordered to give security for costs.(i)

(a) Rules of 1890, Rule 39.

(b) *Ibid.* Rule 38.

(c) *Ibid.* Rules 40 and 41.

(d) *Ibid.* Rule 42.

(e) *Aston Hall Colliery Co.*, 45 L. T. 677.

(f) *Planet Benefit Society*, L. R. 14 Eq. 441, 450.

(g) 25 & 26 Vict. c. 89, s. 114.

(h) R. S. C. 1883, Ord. lviii. Rule 9.

(i) *Photographic Artists' Co-operative Supply Association*, 23 Ch. D. 370.

↘
*The Official Receiver and his duties prior to the
 appointment of a Liquidator.*

On a winding-up order being made, the official receiver, Provisional liquidator. if any, attached to the Court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade, becomes the provisional liquidator of the company.

Such person is styled the official liquidator, and he Official liquidator. continues to act until he or another person becomes liquidator, and is capable of acting as such. *(k)*

When a person other than the official receiver is Liquidator. appointed liquidator of a company he is styled liquidator, and not official liquidator. Such a person is not capable of acting as liquidator until he is notified his appointment to the registrar of joint stock companies and given security in the manner prescribed *(l)* to the satisfaction of the Board of Trade. *(m)*

Where the official receiver is liquidator of a company he is styled official receiver and liquidator. *(n)* Official receiver and Liquidator.

The liquidator must give to the official receiver such Books, &c., to be open to inspection of official receiver. information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties in relation to the winding-up of companies. *(o)*

If any vacancy occurs in the office of liquidator of a Official receiver to be liquidator during any vacancy in the office. company, the official receiver is by virtue of his office the liquidator during the vacancy. *(p)* The official receiver

(k) The Companies Act, 1890, s. 4, ss. 1 and 2. See also s. 6, ss. 3.

(l) See Rules of 1890, Rules 67 and 68: "The cost of furnishing the required security by a liquidator or special manager shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up": Rule 67.(3).

(m) The Companies Act 1890, s. 4, ss. 3.

(n) Rules of 1890, Rule 66.

(o) *Ibid.*

(p) The Companies Act, 1890, s. 4, ss. 4.

may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.^(q)

Receiver in
debenture-
holders' action.

Where an application is made to the Court to appoint a receiver on behalf of the debenture-holders, or other creditors of a company, the official receiver may be so appointed.^(r)

Special
manager.

A special manager can be appointed by the Court on the application of the official receiver where the latter is liquidator, either provisionally or otherwise. The special manager in such case has to give security and account to the official receiver,^(s) and his remuneration is fixed by the Court.^(t)

Report of
official receiver
in support.

The application for the appointment of a special manager must be supported by a report of the official receiver. The report, which has to be filed, must state the remuneration which ought to be allowed. No affidavit in support is required. The remuneration of the special manager must be stated in the order, unless the judge otherwise directs.^(u)

Meetings of
creditors and
contributories.

When the Court has made an order for winding-up a company the official receiver has to summon separate meetings of the creditors and contributories of the company for the purpose of—

- (1) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver ; and
- (2) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the

(q) The Companies Act, 1890, s. 4, ss. 5.

(r) *Ibid.* s. 4, ss. 6.

(s) Rules of 1890, Rule 172.

(t) The Companies Act, 1890, s. 5. He has to personally pay the costs of giving security: Rules of 1890, Rule 67 (3). And he gives security in precisely the same way as a liquidator, as to which see pp. 90, 97.

(u) Rules of 1890, Rule 42.

liquidator, and who are to be the members of such committee, if appointed.(x)

Where practicable, and unless the Court specially directs to the contrary, these meetings are not held until after the statement of affairs of the company has been submitted to the official receiver.(y)

Time for holding first meeting.

The Court can make any appointment and order required to give effect to any determination arrived at by the meetings, and if there is a difference between the meetings of the creditors and contributories in respect of any of the above matters, the Court can decide the difference and make such order thereon as it may think fit.(z)

Power of Court to act on determinations of meetings.

The official receiver gives seven days' notice to each of the directors and officers who he thinks ought to attend the meetings, and it is the duty of the persons receiving the notice to attend.(a)

Notice to directors, &c., of meetings.

The date of the meetings is fixed by the official receiver, and he gives notice of such date to the Board of Trade and the Board gazettes the meetings.(b)

Date of meetings fixed by official receiver.

Notice of the meetings is to be sent to every person who appears from the company's books or otherwise to be a contributory of the company,(c) or appears from the company's statement of affairs to be a creditor.(d)

Notice to contributories.

A creditor cannot vote at this meeting until he has proved his debt and lodged the proof.(e) Creditors and contributories can vote personally or by proxy.(f)

Creditor must first prove his debt.
Proxy.

(x) The Companies Act 1892, s. 6. The first schedule to the Act contains rules regulating such meetings. The official receiver, or a person nominated by him, is chairman (5). Creditors must prove their debts before voting (6). Voting by proxy is allowed (12 and 13), but the proxy must be deposited with the official receiver before the meeting at which it is to be used (17). Meetings may be adjourned (20).

(y) Rules of 1890, Rule 45.

(z) The Companies Act, 1890, s. 6.

(a) Rules of 1890, Rule 43.

(b) *Ibid.* Rule 44.

(c) *Ibid.* Rule 46.

(d) First Sched. to Companies Act, 1890, Rule 3.

(e) *Ibid.* Rule 6.

(f) *Ibid.* Rule 12.



The Statement of Affairs of the Company.

Statement of
affairs of the
company.

Where a winding-up order has been made the official receiver can require one or more of the following persons to make out a statement of affairs of the company. The persons are ;

- (1) The directors ;
- (2) The secretary or other chief officer of the company ;
- (3) Any persons who have been directors or officers of the company, or have taken part in the formation of the company, within a year before the order for winding-up.(g)

What the
statement
contains.

The statement gives particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, and particulars of their securities.(h)

Forms to be
supplied by
official
receiver.

The official receiver has to supply each person required to make the statement with forms and instructions for the preparation of the document.(i)

The statement has to be made out in duplicate, and one copy has to be verified by affidavit.(k)

Time for
statement.

The statement is to be submitted within fourteen days from the winding-up order, but this can be extended by the written certificate of the official receiver.(l)

Costs of
making state-
ment.

The official receiver has power to allow and pay a reasonable sum for the costs and expenses of making the statement, subject to an appeal to the Court.(m)

Penalty for
default.

A person who without reasonable excuse makes default in delivering this statement is liable to a penalty of £10 a day during which his default continues.(n)

(g) The Companies Act, 1890, s. 7, and the Rules of 1890, Rules, 58-62.

(h) *Ibid.*

(i) Rule 58. The form is No. 33.

(k) *Ibid.* s. 7, ss. 2, and Rule 58 (1).

(l) *Ibid.* s. 7, ss. 3, and Rule 59.

(m) *Ibid.* s. 7, ss. 4, and Rule 62. Applications for expenses must be made before they are incurred.

(n) *Ibid.* s. 7, ss. 5.

The official receiver can insist on personal interviews with the persons required to make the statement.^(o) Information about affairs.

Any person stating himself in writing to be a creditor or contributory of the company is entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee,^(p) to inspect this statement of affairs, and to a copy thereof, or extracts therefrom.^(q) He may also, upon the same terms and in the same way, inspect a statement which the liquidator has from time to time to make, if the liquidation continues beyond a year.^(r) Any person untruthfully stating himself to be a creditor or contributory for the purpose of seeing these statements is guilty of a contempt of Court.^(s) Right of creditors and contributories to see statement of affairs.

Reports of Official Receiver.

As soon as practicable after receipt of the statement of the company's affairs the official receiver has to submit in narrative form^(t) a preliminary report to the Court: Preliminary report of the official receiver.

- (a) As to the amount of capital issued, subscribed, and paid up.
- (b) The estimated amount of assets and liabilities : and
- (c) If the company has failed, as to the cause of its failure ; and
- (d) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

The official receiver may also, if he thinks fit, make a further report or reports, stating : Further reports.

- (a) The manner in which the company was formed.

(o) Rules of 1890, Rules 58 (2) and 60.

(p) This fee appears to be 1s. See Order of the 18th Dec. 1890, Table A.

(q) The Companies Act 1890, s. 7, ss. 6.

(r) The Companies Act, 1890, s. 15.

(s) *Ibid.* ss. 6 and 15.

(t) Rules of 1890, Rule 69.

- (b) Whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or officer.
- (c) Any other matter which in his opinion it is desirable to bring to the notice of the Court.(u)

The official receiver may have a day fixed by the Court for the consideration of the report, and the judge will then consider it personally in chambers. The official receiver must attend all the hearings personally or by counsel or solicitor.(x)

The Public Examination of the Promoters and Officers of the Company.

Promoters, officers, and directors may be publicly examined.

The Court may, after consideration of the report or reports of the official receiver, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealing as director or officer of the company.(y)

Who may take part in the examination.

The official receiver and the liquidator, where the official receiver is not liquidator, and any creditor or contributory of the company, may take part in the examination, and may employ a solicitor with or without counsel. The official receiver, before employing a solicitor or counsel, must be specially authorised by the Board of Trade.(z)

Solicitor employed by the official receiver.

The Court may put such questions to the person examined as to the Court may seem expedient.(a)

(u) The Companies Act, 1890, s. 8, ss. 1.

(x) Rules of 1890, Rules 70 and 71.

(y) The Companies Act, 1890, s. 8, ss. 3.

(z) *Ibid.* s. 8, ss. 4 and 5.

(a) *Ibid.* ss. 6.

The person examined is examined on oath. It is his ^{Examination} duty to answer all such questions as the Court puts or ^{on oath.} allows to be put to him.

Before the examination he can insist on being furnished with a copy of the official receiver's report, and ^{Right of person examined.} he is entitled to employ at the examination a solicitor with or without counsel, but both he must do at his own cost. The solicitor or counsel he employs may re-examine him. If the person examined is exculpated from any charge made or suggested against him, the Court can allow ^{When costs can be allowed to person examined.} him costs. Notes of the examination are to be taken ^{Notes of examination.} down in writing, are to be read over to or by the person examined, and signed by him, and can be used in evidence against him. The notes are open to the inspection of any creditor or contributory at all reasonable times. The examination can be adjourned from time to time. ^(b)

If the winding-up is in the High Court, the public ^{Before whom public examination held in the High Court.} examination will, in the absence of any special direction, be before a registrar in bankruptcy of the High Court, ^(c) or by special direction the examination may be before an official referee, master, registrar in bankruptcy, chief clerk, or any district registrar. ^(d)

If the winding-up is in the County Court the public ^{County Court.} examination may be before the judge, or before the registrar of the Court, if such registrar is also a district registrar of the High Court. ^(e)

If the winding-up is in the Stannaries Court, the public ^{Stannaries} examination will be before the warden. ^(f)

If in a Palatine Court, before a registrar of that ^{and Palatine Courts.} Court. ^(g)

All public examinations are held in open Court. ^(h) ^{In open Court.} Notice of the public examination is given to the persons ^{Notice.}

(b) The Companies Act, 1890, s. 8, ss. 7.

(c) *Ibid.* 1890, s. 8, ss. 9, and the Rules of 1890, Rule 72.

(d) *Ibid.*

(e) *Ibid.*

(f) *Ibid.*

(g) The Companies Act, 1890, s. 8, ss. 9.

(h) Rules of 1890, Rule 72.

to be examined by the official receiver by registered post letter, and the examination is advertised in newspapers.(i)

Failure to attend.

Persons failing to attend their public examination without good cause can be arrested on warrant.(k)

The Liquidator, his Powers, Duties, Remuneration, &c.

Report to Court of first meetings.

As soon as possible after the first meetings of creditors and contributories have been held, the official receiver, or the chairman of the meeting has to report the result of each meeting to the Court.(l)

Where meetings unanimous.

If the meetings are unanimous, the Court can forthwith appoint the person nominated by the meeting. If the meetings are not unanimous, the Court, on the application of the official receiver, fixes a day to consider the determination of the meetings and to make the order it deems necessary.(m)

Advertisement of hearing.

The date fixed by the Court is advertised as the Court directs, and not less than seven days before the day appointed.

Hearing.

Upon the consideration of the determinations of the meetings the Court hears the official receiver and any creditors or contributories appearing.

Gazetting appointment.

The liquidator has to give security: his appointment is gazetted by the Board of Trade after he has given security. The liquidator has to pay for the gazetting in the first instance, but such payment can be charged by him on the assets of the company.(n)

Death &c., of liquidator.

In the case of the death, removal, or resignation of a liquidator, another can be appointed in his place in the same way as on a first appointment. The official receiver must summon the necessary meetings if requested by not less than one-tenth in value of the creditors or contributories.(o)

The amount and nature of the security is fixed by the

(i) Rules of 1890, Rule 75.

(l) *Ibid.* Rule 63.

(n) *Ibid.* Rules 63 and 64.

(k) *Ibid.* Rule 76.

(m) *Ibid.* Rule 63 (2).

(o) *Ibid.* Rule 65.

Board of Trade. It can be increased or diminished by the Board. The cost of giving it has to be borne by the liquidator personally. If he fails to give or keep up the security within the time specified by the Order, or any extension of it, the Order appointing him will be rescinded.(p)

Amount, &c.,
of security.

The liquidator of a company which is being wound-up by the Court has power to do any of the following acts with the sanction of (a) the Court, or (b) the committee of inspection :—

1. Pay any class of creditors in full.
2. Make a compromise or arrangement with creditors or persons claiming to be creditors.
3. Compromise calls.
4. Compromise debts.
5. Compromise questions in any way relating to or affecting the assets of the company.
6. Employ a solicitor or agent.(q)

Acts a
liquidator can
do with the
sanction of the
Court or
committee of
inspection.

He has power, without any sanction(r)—

1. To bring and defend actions in the name and on behalf of the company.
2. To carry on the business of the company so far as may be necessary for the beneficial winding-up : (s)
3. To sell the property of the company :
4. To execute, in the name of the company, all deeds, receipts, and other documents, and for that purpose to use the company's seal :
5. To prove and take dividends in the matter of a bankruptcy or sequestration of a contributory :

Acts he can
do without
such sanction.

(p) Rules of 1890, Rules 67 and 68. The Rules as to giving security apply also to a special manager.

(q) See the Companies Act, 1890, s. 12, ss. 1, and the Companies Act, 1862, ss. 159 and 160.

(r) The Companies Act, 1890, s. 12, and the Companies Act, 1862, s. 95.

(s) The Court has no power in a winding-up to sanction a contract by the liquidator, unless it can be shown that its object is the beneficial winding-up of the company : *In re Wreck Recovery and Salvage Co.*, 15 Ch. D.

6. To draw, accept, and endorse any bill of exchange or promissory note in the name and on behalf of the company ; also to raise upon the security of the assets of the company any requisite sum or sums of money :
7. To take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any sum due from a contributory or from his estate, and which cannot be conveniently done in the name of the company.(*t*)
8. To do and execute all such other acts and things as may be necessary for winding-up the affairs of the company and distributing its assets.(*u*)

Control over
the exercise of
powers.

The exercise by the liquidator of his powers is subject to the control of the Court, and any creditor or contributory can apply to the Court with respect to any exercise or proposed exercise of such powers.(*x*)

Employment
by the
liquidator of a
solicitor or
agent.

The sanction to the employment of a solicitor or other agent must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.(*y*)

Directions by
the Court.

The liquidator can apply to the Court for directions in any particular matter.(*z*)

Appeal from
acts of
liquidator.
The liquid-
ator's remun-
eration.

Any person aggrieved by any act of the liquidator can appeal to the Court.(*a*)

The remuneration of a liquidator must, unless the Court otherwise orders, be fixed by the committee of inspection. It is to be in the nature of a commission or percentage,

(*t*) A liquidator, in serving a bankruptcy notice, must comply strictly with the terms of s. 62 of the Companies Act, 1862, and serve the notice in the name of the company, not in his own name. *In re Winterbotham* 18 Q. B. D. 446.

(*u*) The Companies Act, 1862, s. 95, and the Companies Act, 1890, s. 12.

(*x*) The Companies Act, 1890, s. 12, ss. 3.

(*y*) *Ibid.* s. 12, ss. 4.

(*z*) *Ibid.* s. 23, ss. 3.

(*a*) *Ibid.* s. 24.

of which one part is payable on the amount realised after deducting the sums (if any) paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividends.(b)

If there is no committee of inspection, the remuneration of the liquidator is to be in accordance with the scale of percentage payable for realisations and distributions by the official receiver as liquidator.(c)

Where there is no committee of inspection.

The Board of Trade has a general control over liquidators, and can direct inquiries into their conduct, and investigations of their accounts.(d)

Control of Board of Trade.

The solicitor for the liquidator can appear for him in Court or Chambers, unless the presence of the liquidator is necessary in addition to his solicitor, or the Court specially directs him to attend.(e)

A liquidator or member of the committee of inspection cannot, without the express sanction of the Court, purchase any part of the assets of the company, or make purchases on account of the company, from any person whose connection with the liquidator or member of the committee is of such a nature that the latter will obtain any portion of the profit of the transaction.(f)

Liquidator, &c. not to make purchases involving gain to himself.

The liquidator or member of the committee of inspection who requires the sanction of the Court to some transaction involving a profit to himself has personally to bear the cost of obtaining such sanction.(g)

Cost of obtaining sanction of Court to profits of liquidator, &c.

Members of the committee of inspection may, with the sanction of the Court, receive payment out of the assets of the company for special services.(h)

Payment for special services.

All moneys received by the liquidator of a company are to be paid into the Bank of England. The one exception to this rule is that, if the committee of inspection satisfy the Board of Trade that there are good reasons for

Moneys received by the liquidator to be paid into the Bank of England.

(b) Rules of 1890, Rule 154.

(c) *Ibid.* This scale of percentage is set out in the Appendix.

(d) The Companies Act, 1890, s. 25.

(e) Rules of 1890, Rule 174.

(f) *Ibid.* Rules 156 and 157.

(g) *Ibid.* Rule 159.

(h) *Ibid.* Rule 160.

Exception. the liquidator having an account at another bank, it can authorise the employment of another bank.(i)

Costs of liquidator's solicitor. As between the liquidator and his solicitor, the liquidator is not personally liable for the costs of the winding-up.(k) The solicitor's costs are regulated by a schedule of fees under the General Orders of 1862.(l) In matters falling within the provisions of the Solicitors' Remuneration Act, 1881 (*i.e.*, in matters of conveyancing), the solicitor's costs are regulated by the General Order made in pursuance of that Act. The solicitor under the General Order (Rule 6) has power to elect by notice that his remuneration shall be under Schedule 2, instead of Schedule 1 of that order. If the solicitor gives such notice, it is the duty of the liquidator, in order to discharge his duty of protecting the assets of the company, to obtain the direction of the Judge in Chambers as to whether he ought to continue to employ a solicitor who requires payment on the more expensive footing.(m)

In practice it is the invariable rule that a liquidator who is a solicitor shall not employ his partner as his solicitor in the winding-up, unless he be willing to act without remuneration.(n)

Liquidator liable for negligence.

A liquidator, though in some sense a trustee, is a paid agent, bound to discharge his duties with reasonable care and skill, and may be deprived of costs for a mistake which would not disentitle an ordinary gratuitous trustee.(o)

Cannot be required to make an affidavit of documents.

A liquidator, being an officer of the Court, is not in the position of an ordinary litigant, and will not under ordinary circumstances be required to make an affidavit as to documents in his possession. He is bound

(i) The Companies Act, 1890, s. 11.

(k) *Anglo-Moravian Co., Ex p. Watkin*, 1 Ch. D. 130. Nor is a liquidator in a voluntary winding-up. *Trueman's Estate, Hooker v. Piper*, L. R. 14 Eq. 278; and see *In re Massey*, L. R. 9 Eq. 367.

(l) Gen. Order, November, 1862, Rule 70, Sched. 1.

(m) *United Kingdom, &c., Association*, 40 Ch. D. 471.

(n) *Universal Private Telegraph Co.*, 19 W. R. 297.

(o) *Silver Valley Mines*, 21 Ch. D. 381.

to produce to the adverse litigant the documents which the latter requires to have produced.(p)

A professional liquidator (*e.g.*, an accountant) against whom no personal unfitness is shown or suggested will not be removed for the purpose of appointing a lay liquidator (without special experience) in his place, even although the latter agrees to act without remuneration.(q)

The Committee of Inspection.

The persons who can be elected on the committee of inspection are : Committee of inspection.

- (a) Creditors of the company ;
 - (b) Contributories of the company ;
 - (c) Persons holding general powers of attorney from creditors or contributories.(r)
- Who can be elected upon it.

The proportion in which the above persons are to be elected can be agreed on by the meetings of creditors and contributories, or can be determined by the Court in case of difference.(s)

The committee of inspection meet at such times as they from time to time appoint, and, failing such appointment, at least once a month. The liquidator or any member of the committee may also call a meeting when he thinks necessary. Times of meetings.

The committee may act by a majority of their members present at a meeting, but cannot act unless a majority of the committee are present at the meeting. Quorum.

Any member of the committee may resign his office Resignation of members.

(p) *Mutual Society*, 22 Ch. D. 714.

(q) *Civil Service and General Stores*, W. N. 1884, 158.

(r) The above are the words of the section. It is presumed "general proxies" are intended. Under the Rules contained in the first Schedule to the Act a creditor or contributory can only give a general proxy to a manager, clerk, or other person in his regular employment. It must state the relationship in which the proxy stands to the creditor or contributory (15).

(s) The Companies Act, 1890, sec. 9, ss. 1.

by notice in writing signed by him and delivered to the liquidator.

If any member of the committee—

Involuntary
resignation.

- (a) Becomes bankrupt ;
- (b) Compounds with his creditors ;
- (c) Is absent from five consecutive meetings without leave of those members of the committee who, together with himself, represent the creditors or contributories ;

his office shall become vacant.

Removal of
members of
the committee
of inspection.

A member of the committee representing creditors may be removed by an ordinary resolution of a meeting of creditors, and a member of the committee representing contributories may be removed by an ordinary resolution of the contributories. Seven days' notice of such meeting must be given in each case, and the notice must state the object of the meeting.

Vacancies, how
filled up.

Vacancies in the committee are filled up by meetings of the creditors or contributories, as the case may require.

Continuing
members may
act.

The continuing members of the committee may act provided their number be not less than two.

Sanction
where no
committee.

If there is no committee of inspection, any sanction the committee could give can be given by the Board of Trade in their stead. (t)

No member of
the committee
of inspection
to make a
profit out of
the winding-
up.

No member of the committee of inspection in a winding-up is, except under and with the sanction of the Court, entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for service rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. He cannot do this directly or indirectly, by himself, or by any employer, partner, clerk, agent, or servant. If it appears to the Board of Trade that any such profit or payment has been made, they may

Any such
profit can be
disallowed.

(t) The Companies Act, 1890, s. 9, ss. 1-9.

disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts.(u)

Any purchases of assets of the company by a member of the committee of inspection, or sales to the company in which a member is interested, can only be made with the sanction of the Court. The member has to pay the costs of obtaining such sanction.(x)

Contracts with members of the committee of inspection.

Proof of Debts.

The Court has power to fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.(y) This does not prevent a creditor from coming in and proving his debt at any time before a company is dissolved. The penalty for not coming in before the date fixed by the Court is not exclusion altogether, but only exclusion from a dividend made before the proof of debt.(z)

Power of Court to fix a day for proof of debts.

A creditor not proving cannot disturb dividends made before his debt has been proved.

Every creditor must prove his debt.(a)

Debt must be proved.
How proved.

The debt is proved by delivering, or sending through the post in a prepaid letter, to the official receiver, or, if a liquidator has been appointed, to the liquidator, an affidavit verifying the debt.(b)

The affidavit may be made by the creditor, or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it must state his authority and means of knowledge.

Who may make the affidavit.

The affidavit must contain or refer to a statement of account showing the particulars of the debt, and must specify the vouchers, if any, by which the debt can be

What the affidavit must contain.

(u) Rules of 1890, Rule 158.

(x) *Ibid.* Rules 156 and 157 ; and see *ante*, p. 99.

(y) The Companies Act, 1862, s. 107.

(z) *Kit Hill Tunnel*, 16 Ch. D. 590. See also *Hicks v. May*, 13 Ch. D. 236.

(a) Rules of 1890, Rule 96.

(b) *Ibid.* Rule 97.

substantiated. The official receiver or liquidator may at any time call for the production of the vouchers.(c)

It must show whether the creditor is secured or not. Costs of proving debt. Discounts to be deducted.

The affidavit must state whether the creditor is or is not a secured creditor.(d)

The creditor has to bear the costs of proving his debt, unless the Court otherwise orders.(e)

A creditor proving his debt must deduct therefrom all trade discounts, but he cannot be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.(f)

Proof for rent and other periodical payments.

When any rent or other payment falls due at stated periods, and the order to wind up is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof, up to the date of the winding-up order, as if the rent or payment grew due from day to day.(g)

Proof for debt not due at date of winding-up order.

A creditor may prove for a debt not payable when the winding-up order was made, as if it were payable immediately, subject to a rebate of interest at the rate of five per centum per annum, computed from the date of the winding-up to the time when the debt would have become payable according to the terms on which it was contracted.(h)

Interest on overdue debts.

On debts overdue at the date of the winding-up order a creditor may prove for interest :

- (a) If the debt is payable at a certain time by virtue of a written instrument; or
- (b) If a written demand for payment has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

The interest is to be at the rate of four per cent. per annum, and it is to be calculated from the time when the

(c) Rules of 1890, Rule 99.

(d) *Ibid.* Rule 101.

(g) *Ibid.* Rule 103.

(d) *Ibid.* Rule 100.

(f) *Ibid.* Rule 102.

(h) *Ibid.* Rule 105.

debt was payable, or from the written demand made, to the commencement of the winding-up.(i)

In any case in which it appears from the statement of affairs that there are numerous claims for wages by workmen and others employed by the company, it is sufficient if one proof for all such claims is made, either by a foreman or by some other person on behalf of all such creditors. Such proof must have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule has the same effect as if separate proofs had been made by each of the said workmen and others.(k)

Proof for workmen's wages.

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, it must (subject to any special order of the Court) be produced to the official receiver, chairman of a meeting, or liquidator, as the case may be, and be marked by him, before the proof can be admitted, either for voting or for any other purpose.(l)

Bills of exchange, promissory notes, &c., must be produced before the proof can be used.

A proof intended to be used at the first meeting of creditors, or at an adjournment thereof, must be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting.(m)

Proofs to be lodged before meeting.

When a liquidator is appointed, all proofs of debt that have been received by the official receiver must be handed over to the liquidator; but the official receiver must first make a list of such proofs, and take a receipt for them from the liquidator.(n)

Transmission of proofs from official receiver to liquidator.

(i) Rules of 1890, Rule 104. For the sake of brevity and clearness I have departed considerably from the order and words of the Rule.

(k) *Ibid.* Rule 105.

(l) *Ibid.* Rule 107.

(m) *Ibid.* Rule 108.

(n) *Ibid.* Rule 109.

Admission and Rejection of Proofs.

Duty of liquidator to examine proofs and admit or reject them.

The liquidator must examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he must state in writing to the creditor the grounds of the rejection.(o)

Power of Court on appeal to reverse the decision of the liquidator.

If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision.

Application to be within twenty-one days.

Notice of any application to reverse or vary the decision of the liquidator rejecting a proof must be given before the expiration of twenty-one days from the date of the rejection, but this time can be extended by the Court.(p)

A proof improperly admitted can be expunged at instance of liquidator, &c.

If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.(q)

The Court may also expunge or reduce a proof upon the application of a creditor or contributory, if the liquidator declines to interfere in the matter.(r)

Liquidator may administer oaths.

For the purpose of any of his duties in relation to proofs, the liquidator may administer oaths and take affidavits.(s)

Official receiver has the same powers as a liquidator.

The official receiver, before the appointment of a liquidator, has all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto is subject to the same appeal.(t)

Official receiver to file proofs before payment of a dividend.

The official receiver, when no other liquidator is appointed, must, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such lists the proofs which were wholly

(o) Rules of 1890, Rule 110.

(q) *Ibid.* Rule 112.

(s) *Ibid.* Rule 114.

(p) *Ibid.* Rule 111.

(r) *Ibid.* Rule 113.

(t) *Ibid.* Rule 115.

or partly admitted, and the proofs which were wholly or partly rejected.^(u)

Every liquidator other than the official receiver must, Monthly lists of proofs. on the first day of every month, file with the proceedings a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and in the case of proofs admitted or rejected he must place the proofs on the file of proceedings.^(x)

The official receiver or (as the case may be) the liquidator must, within three days after receiving notice from Procedure where creditor appeals. a creditor of his intention to appeal against a decision rejecting a proof, file such proof, with a memorandum thereon, of his disallowance thereof.^(y)

Subject to the power of the Court to extend the time, Time within which proofs must be admitted or rejected by official receiver the official receiver, as liquidator, not less than fourteen days from the latest date specified in the notice of his intention to declare a dividend at the time within which such proofs must be lodged, must, in writing, either admit or reject, wholly or in part, every proof lodged with him, or require further evidence of it.^(z)

Subject to the power of the Court to extend the time, and by liquidator. the liquidator, other than the official receiver, within twenty-eight days after receiving a proof which has not been previously dealt with, must, in writing, either admit or reject it, wholly or in part, or require further evidence in support of it. Where the liquidator has given notice of his intention to declare a dividend, he must, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, every proof which has not been already dealt with, and give notice of his decision rejecting the proof, wholly or in part, to the creditors affected thereby.^(a)

^(u) Rules of 1890, Rule 116.

^(x) *Ibid.* Rule 117.

^(y) *Ibid.* Rule 118.

^(z) *Ibid.* Rule 119.

^(a) *Ibid.* Rule 120.

Official receiver not personally liable for costs of an appeal.

The official receiver is in no case personally liable for costs in relation to an appeal from his decision rejecting any proof, wholly or in part.(b)

Proxies.

Lodging of proxies.

A proxy must be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.(c)

A minor cannot be a proxy.

No person can be appointed a general or special proxy who is a minor.(d)

Deputy proxy of official receiver.

Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may in writing depute some person under his official control to use the proxies on his behalf, in such manner as he may direct.(e)

Proxy of blind creditor, or creditor incapable of writing.

The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness. The witness must add to his (the witness's) signature his description and residence. All insertions in the proxy must be in the handwriting of the witness, and such witness must certify at the foot of the proxy that all such insertions have been made by him at the request of the creditor, and in his presence, before he attached his signature or mark.(f)

General Meetings of Creditors and Contributories.

General meetings.

In addition to the first meeting of creditors and contributors, the liquidator may from time to time, when he thinks expedient, hold meetings of creditors and contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up.(g) When requested

(b) Rules of 1890, Rule 121.

(c) *Ibid.* Rule 123.

(d) *Ibid.* Rule 123 (2).

(e) *Ibid.* Rule 124.

(f) *Ibid.* Rule 125.

(g) *Ibid.* Rule 47. See also s. 23 of the Companies Act, 1890.

in writing to do so by one-tenth in value of the creditors or contributories, he must summon such a meeting.^(h)

The meetings are called by notices to the creditors and contributories.⁽ⁱ⁾ Notices of meetings.

The notice is sent to each creditor—

- (a) To the address given in his proof; To creditors.
- (b) If he has not proved, to the address given in the statement of affairs; or
- (c) To any other address known to the person summoning the meeting.

Notice to a contributory is sent—

- (a) To the address mentioned in the books of the company as the address of the contributory; or
- (b) To any other address known to the person summoning the meeting.^(k) To contributories.

Seven days' notice is to be given.^(l) The certificate of posting by the official receiver or his clerk, or an affidavit of posting of the liquidator or his solicitor, or the clerk of either of them, is sufficient evidence of the notice.^(m) Length of notice.
Evidence of notice.

The meeting is not invalidated because some creditors or contributories do not receive notice.⁽ⁿ⁾ Non-receipt of notice.

If the meeting is called at the instance of any person other than the official receiver or liquidator, such person has to provide the necessary costs; such costs may be paid out of the assets if the creditors or contributories by resolution so direct.^(o) Costs of meeting.

Adjourned meetings are to be held at the same place as the original meeting, unless the resolution or the Court otherwise directs.^(p) Adjourned meetings.

Only creditors entitled to vote are reckoned in a quorum.^(q) Creditors counted in quorum.

(h) The Companies Act, 1890, s. 23.

(k) *Ibid.* Rule 48.

(m) *Ibid.* Rule 50.

(o) *Ibid.* Rule 51.

(q) *Ibid.* Rule 57.

(i) Rules of 1890, Rule 48.

(l) *Ibid.* Rule 49.

(n) *Ibid.* Rule 55.

(p) *Ibid.* Rule 56.

Chairman. At meetings summoned by the official receiver, he, or some one nominated by him, is the chairman. In all other cases the meeting can appoint its own chairman.^(r)

Votes of creditors and contributories. In the voting of creditors regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.^(s)

Resolutions to be sent to the Court. Certified copies of the resolutions have to be sent by the liquidator or official receiver to the Court. They are sent to the chief clerk if the winding-up is in the High Court, otherwise to the registrar of the Court having jurisdiction.^(t)

Directions of creditors, &c., as to administration. In the administration of the property of the company the liquidator must have regard to any directions given by the resolutions of creditors or contributories at any general meeting, or by the committee of inspection. In case of conflict, the resolutions of the creditors or contributories override the directions of the committee of inspection.^(u) In the absence of such directions the liquidator can use his own discretion.^(x)

The liquidator can apply to the Court for directions in any particular matter arising in the winding-up.^(y)

The List of Contributories.

The list of contributories. The liquidator must, with all convenient speed after his appointment, settle a list of the contributories of the company.

The "A" list. One list is technically known as the "A" list of contributories. It is a list of those persons only who were members of the company at the commencement of the winding-up.^(z)

The "B" list. The past members—that is, the persons who have ceased to be members within a year prior to the commencement

(r) Rules of 1890, Rule 52.

(s) The Companies Act, 1862, s. 91; and Rules of 1890, Rule 53.

(t) Rules of 1890, Rule 54.

(u) The Companies Act, 1890, s. 23.

(x) *Ibid.* s. 23, ss. 4.

(y) *Ibid.* s. 23, ss. 3.

(z) Rules of 1890, Rule 83.

of the winding-up—are placed in another list, called the “ B ” list.(a)

The “ A ” list is settled as soon after the appointment of liquidator as possible. It was the settled practice of the Court prior to the Companies (Winding-up) Act, 1890 (and there is no reason why the practice should be altered), not to settle the “ B ” list until it had been shown that the present members of the Company were unable to satisfy the debts.(b)

The list of contributories contains a statement of the address of and the number of shares or extent of interest to be attributed to each contributory. It distinguishes between persons who hold shares in their own right and as representatives for other persons.(c)

The liquidator gives notice in writing of the time and place he has appointed for settlement of the list of contributories to every person he proposes to include in the list. The notice states to each person in what character and for what number of shares or what interest he proposes to include such person in the list.(d)

On the appointed day the liquidator hears persons who object to be settled on the list, and finally settles it.(e)

The liquidator gives notice to every person finally settled on the list, of the fact. The notice states in what character and for what number of shares or interest he has been placed on the list.(f)

Any application to vary the list of contributories must be made by summons within twenty-one days from the service on the contributory, or alleged contributory, of the fact that his name is settled on the list of contributories,

(a) See sec. 38 of the Companies Act, 1862.

(b) *Wright's Case*, L. R. 12 Eq. 335, n. 345. *McEwen's Case*, L. R. 6 Ch. 582.

(c) Rules of 1890, Rule 83, and Form 45. See also the Companies Act, 1890, s. 13; and the Companies Act, 1862, ss. 98 and 99.

(d) Rules of 1890, Rule 84, and Form 46.

(e) *Ibid.* Rule 85.

(f) *Ibid.* Rule 86, and Forms 48, 50, and 51.

and no application will be entertained after that date except on special circumstances.*(g)*

Variations
and additions
to list by
liquidator.

The liquidator has power from time to time to vary or add to the list of contributories, but any such variation or addition must be made in the same manner in all respects as the settlement of the original list.*(h)*

Liquidator
cannot rectify
list of members
without leave.

But he cannot, without the special leave of the Court, rectify the register of members, and cannot make any call without either the special leave of the Court or the sanction of the committee of inspection.*(i)*

Calls.

How made.

Calls (*i.e.*, demands on the contributories to rateably supply funds to satisfy the debts of the company) can be made by the liquidator.*(k)*

Sanction of
the committee
of inspection.

Before making a call the liquidator must obtain the sanction of the committee of inspection, if there is one.

How obtained.

The sanction has to be obtained at a meeting of the committee of inspection.

Notice of
meeting.

Each member of the committee must have not less than seven days' notice of the meeting.

What it must
state.

The notice must state the proposed amount of the call, and the purpose for which it is intended.

Advertisement
of notice.

Notice of the intended call and meeting has to be advertised in a London and also in a local newspaper.

The advertisement has to state the time and place of the meeting of the committee of inspection, and that each contributory may attend the meeting and be heard, or may send a communication in writing to the committee.

Resolution of
the committee.

The sanction of the committee is given by a resolution passed by a majority of the members present.

(g) Rules of 1890, Rules 86 and 87. See also ss. 13 and 24 of the Companies Act, 1890.

(h) Rules of 1890, Rule 88, and Forms 49 and 52.

(i) The Companies Act, 1890, s. 13.

(k) Rules of 1890, Rule 92.

Where there is no committee of inspection the liquidator must obtain the leave of the Court before making a call.^(l) The application is by summons, and has to be served on each contributory included in the call. Four clear days' notice of the summons must be given.^(m)

Sanction of Court.

After a call has been made a copy of the resolution or order sanctioning it has to be served on each contributory included in the call, and the call can be enforced by order of the Court, obtained in Chambers on summons by the liquidator.⁽ⁿ⁾

Call, how enforced.

Dividends.

Not more than two months before declaring a dividend, the liquidator must give notice of his intention to do so—

Notice of intended dividend.

- (a) To the Board of Trade;
- (b) To such of the creditors mentioned in the statement of affairs as have not proved their debts.

The notice must specify the latest date up to which proofs must be lodged, which must not be less than fourteen days from the date of such notice.^(o)

Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal must be given within seven days from the date of the notice of the decision against which the appeal is made (the time can be extended for special causes), and the liquidator may in such case make provision for the dividend upon such proof and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified, the liquidator must exclude all proofs which have been rejected from participation in the dividend.^(p)

Provision for a dividend when notice of appeal given.

(l) Rules of 1890, Rule 92.
 (n) *Ibid.* Rules 94 and 95.
 (p) *Ibid.* Rule 122 (2).

(m) *Ibid.* Rule 93.
 (o) *Ibid.* Rule 122.

Declaration of
a dividend.

Immediately after expiration of the time fixed for appealing against the decision of the liquidator he must proceed to declare a dividend, and must give notice to the Board of Trade (in order that the same may be gazetted), and must also send a notice of dividend to each creditor whose proof has been admitted.(q)

Fresh notice
where the
declaration of
a dividend is
postponed.

If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator must give a fresh notice of his intention to declare a dividend to the Board of Trade; but it is not necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure is to follow the fresh notice as would have followed the original notice.(r)

Unclaimed Dividends.

Duty of
liquidator with
regard to
unclaimed
dividends.

If it appears from the statement as to the proceedings in and position of the liquidation, or otherwise, that a liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company, which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator must forthwith pay the same to the Companies' Liquidation Account at the Bank of England. Every such liquidator is entitled to the prescribed certificate of receipt for the moneys so paid, and that receipt is an effectual discharge to him in respect thereof.(s)

Payment out
to person
entitled.

Any person claiming to be entitled to any money paid into the Bank of England by the liquidator can apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate of the liquidator that

(q) Rules of 1890, Rule 122 (3).

(r) *Ibid.* Rule 122 (4).

(s) The Companies Act, 1890, s. 15, ss. 3.

the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any such claim can appeal to the High Court.(t)

Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, must furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company whenever required to do so. The Board of Trade may require such particulars to be verified by affidavit.(u)

Particulars of unclaimed dividends to be furnished to the Board of Trade.

The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as liquidator of the company, and can direct and enforce an audit of the accounts.(x)

Power of Board of Trade to call for an account.

The powers of the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor can be exercised against a liquidator for the purpose of making him disgorge unclaimed dividends and undistributed assets.(y)

Books of Account.

The official receiver, until a liquidator is appointed, and after his appointment the liquidator, must keep the two following books, viz.—

Books to be kept by liquidator.

- (a) A record book ;
- (b) A cash book.

In the record book he must enter—

Record book.

- (1) Minutes of proceedings and resolutions passed at meetings of creditors, contributories, or the committee of inspection.

(t) The Companies Act, 1890, s. 15, ss. 55.

(u) Rules 1890, Rule 128.

(x) *Ibid.* Rule 129.

(y) The Companies Act, 1890, s. 15 ; and Rules of 1890, Rules 129 and 130.

- (2) All matters necessary to give a correct view of his administration of the company's affairs.(2)

Documents of a confidential nature (*e.g.*, opinions of counsel) need not be inserted. Such documents need not be exhibited by the official receiver or liquidator to any person other than a member of the committee of inspection.

Cash book. In the cash book he must enter from day to day the receipts and payments made.

The record book and cash book must be submitted to the committee of inspection, together with any other requisite books and documents, when required, and not less than once every three months,(a) for audit by the committee, and the committee must certify in the book the day on which the book was audited.(b)

Accounts to be sent to the Board of Trade.

Duplicate copies of the cash book must be transmitted by the liquidator to the Board of Trade every six months, together with the necessary vouchers and copies of the certificate of audit by the committee of inspection.(c)

Statement of affairs showing realisations.

With the first accounts the liquidator must forward a copy of the statement of affairs, showing in red ink the amounts realised, and explaining the cause of the non-realisation of assets not realised.(d) If all the assets have been realised and distributed, the accounts must be sent at once, although six months may not have expired since the commencement of the liquidation.(e)

Trading accounts.

If the liquidator carries on the business of the company he must keep a distinct trading account. The trading account has not less than once a month to be verified by affidavit and submitted to the committee of inspection.(f) The accounts sent by the liquidator have to be certified and verified by him, and accompanied by a summary.(g)

Committee.

(2) Rules of 1890, Rule 143; and see the Companies Act, 1890, s. 21.

(a) *Ibid.* Rule 144.

(b) *Ibid.* Rule 135.

(c) *Ibid.* Rule 136; and the Companies Act, 1890, s. 20.

(d) *Ibid.*

(e) *Ibid.*

(f) *Ibid.* Rule 137.

(g) *Ibid.* Rules 136 (3), and 139; and see Form 75.

If the liquidator has not received or paid any money since the last accounts sent, instead of accounts he forwards to the Board of Trade an affidavit of no receipts or payments.^(h) Affidavit of no receipts or payments.

On a liquidator resigning, or being released or removed from his office, he must deliver to the official receiver, or to the new liquidator, all his books, documents, papers, and accounts. His release will not take effect until this is done.⁽ⁱ⁾ Custody of books on release, &c., of liquidator.

Statements as to Pending Liquidations.

If the winding-up of a company is not concluded within one year from its commencement,^(k) the liquidator of the company must, until the winding-up is concluded, send to the registrar of joint stock companies a periodical statement with respect to the proceedings in and position of the winding-up.^(l) Information as to pending liquidations.

The statement must be in duplicate.^(m)

The statement is to be sent twice in every year.⁽ⁿ⁾ The first statement is to be sent at the expiration of thirty days from the termination of the first year during which the liquidation proceedings have been pending. The succeeding statements are to be sent at intervals of half a year until the winding-up of the company is concluded.^(o) Statement to be in duplicate, and to be sent twice every year.

Each statement must consist of a statement of account dated from the last statement of account sent in, together with a copy of the entries in the record book made since such date.^(p) What the statement must contain.

A liquidator failing to make and send the required Penalty for not sending statement.

^(h) Rules of 1890, Rule 140.

⁽ⁱ⁾ *Ibid.* Rule 141.

^(k) The commencement will be the time of the presentation of the petition :
The Companies Act, 1862, s. 84.

^(l) The Companies Act, 1890, s. 15, ss. 1.

^(m) Rules of 1890, Rule 127.

⁽ⁿ⁾ The Board of Trade has power by general order to alter the form in which and the intervals at which this statement is to be sent.

^(o) Rules of 1890, Rule 127 (1).

^(p) *Ibid.* and see Form 75 in Schedule to the Rules.

statement is liable to a fine not exceeding £50 for each day during which the default continues.(q)

Right of creditor or contributory to inspect the statement.

Any person stating himself in writing to be a creditor or contributory of the company is entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee,(r) to inspect the statement, and to a copy thereof or extract therefrom.

Any person untruthfully so stating himself to be a creditor or a contributory is guilty of a contempt of Court, and punishable accordingly, on the application of the liquidator or of the official receiver.(s)

Conclusion of the liquidation.

For the purpose of sending these half-yearly statements, a winding-up by the Court is to be deemed concluded from the date at which the order dissolving the company has been reported by the liquidator to the registrar of joint-stock companies; in the case of a voluntary winding-up, or a winding-up subject to supervision, from the date of the dissolution of the company,(t) unless the liquidator has unclaimed or undistributed assets in his hands, in which case it will not be deemed to be concluded until the funds are distributed or paid into the Companies' Liquidation Account of the Bank of England.(u)

The order in which Costs are payable out of the Assets of the Company.

Order of priority of costs.

The fees paid and actual expenses incurred in realising and getting in the assets take priority over every other payment.(x)

Costs of realisation.

Subject to this, the costs are paid in the following order:

Costs of petition.

(1) The taxed costs of the petition (including the

(q) The Companies Act, 1890, s. 15, ss. 2.

(r) A fee of 1s. ; see Order as to fees, Dec. 1890.

(s) The Companies Act, 1890, s. 15.

(t) As to this, see *post*, Ch. on Voluntary Winding-up.

(u) Rules of 1890, Rule 126.

(x) *Ibid.* Rule 31.

costs of all parties appearing allowed by the Court).

- (2) The remuneration of the special manager (if any). Special manager's remuneration.
- (3) The costs and expenses of the statement of affairs—*i.e.*, the costs of the persons making or concurring in making it. Statement of affairs.
- (4) The taxed costs of any shorthand writer appointed to take an examination. (If the shorthand writer be appointed on the application of the official receiver, these costs are deemed part of the expenses of realising the assets.) Shorthand writer.
- (5) The necessary disbursements of the liquidator, other than the costs of realisation. Disbursements of liquidator.
- (6) The costs of persons properly employed by the liquidator, with the sanction of the committee of inspection. Persons employed by liquidator.
- (7) The remuneration of the liquidator. Liquidator's remuneration.
- (8) The out-of-pocket expenses of the committee of inspection. Expenses of committee of inspection.

Taxation of Costs, Charges, and Expenses.

The procedure to obtain a taxation of costs or charges payable by or to the official receiver or liquidator, or which are to be paid out of the assets of the company, is as follows :—

The bill or charges must be left with the official receiver if incurred prior to the appointment of a liquidator, and with the liquidator if incurred after that date. Costs payable by or to official receiver, &c.
Bill must be left with official receiver, &c.

After the bill or charges have been left with the official receiver or liquidator for three clear days, an application for an appointment to tax can be made to the taxing master, and not before. Appointment to tax.

(y) Rules of 1890, Rule 31.

(z) *Ibid.* Rule 24

- Notice of appointment to tax. After the appointment to tax is obtained, not less than three clear days' notice of the appointment must be given to the official receiver, and also to the liquidator (if any).^(a)
- Copy of bill. A copy of the bill or charges can be required, either by the official receiver or liquidator, from the person whose bill or charges are to be taxed, on payment to such person of fourpence a folio for the copy.^(b)
- Duty of official receiver. The official receiver must call the attention of the liquidator to any items which in his opinion require attention. He can also attend, or be represented on the taxation.^(c)
- Lodgment of bill with taxing-master. On receiving notice of taxation the official receiver or liquidator, as the case may be, has to lodge the bill or charges with the taxing-master.^(d)
- Certificate of employment. Before taxation of the bill or charges of any person employed by the official receiver or liquidator, a certificate in writing, signed by the official receiver or liquidator, must be produced to the taxing-master, setting forth whether any, and if any, what, special terms for remuneration have been made.
- Solicitors' bill. In addition, before taxation of a solicitor's bill, a copy of the resolution, or other authority sanctioning the employment, must be produced to the taxing-master.^(e)
- Certificate of taxation. After taxation of the bill or charges the taxing-master issues to the person presenting the bill a certificate of taxation, and files the bill.^(f)
- Reviews of taxation. The Board of Trade can require a review to be made of any taxation made by a registrar of a court, other than the High Court.

The practice on such a review is as follows:—

- (1) The Board of Trade gives notice to the person whose bill has been taxed.

(a) Rules of 1890, Rule 23.

(b) *Ibid.* Rule 25. The rule is ambiguous, but I think it means that two copies may be demanded.

(c) *Ibid.*

(e) *Ibid.* Rule 29 ; see *ante*, pp. 97, 98.

(d) *Ibid.* Rule 24.

(f) *Ibid.* Rule 27.

- (2) The Board applies to the taxing-master of the Chancery Division to appoint a time to review the taxation.
- (3) The Board gives notice to the person whose bill is to be taxed of the appointment to review.
- (4) The taxing-master whose taxation is reviewed forwards the bill to the Chancery taxing-master.
- (5) The Board of Trade can appear on the review.
- (6) If the bill is reduced on review, the difference is to be repaid to the official receiver or liquidator, if already paid.(g)
- (7) The Chancery taxing-master can allow costs to the person whose bill is reviewed, but the cost of a London agent only, not of the principal, will be allowed if he can sufficiently represent the principal.(h)

Release of Liquidator.

The liquidator may apply for his release when he has— When he may apply.

- (a) Realised and distributed all the property of the company; or all that can, in his opinion, be realised without needlessly protracting the liquidation; or
- (b) Been removed from his office.(i)

The application is to the Board of Trade.(k)

Before applying he must give notice of his intention to apply to all creditors who have proved, and all the contributories.(l) To Board of Trade.
Notice before application.

On his application the Board of Trade causes a report on his accounts to be prepared. Report on his accounts.

The Board of Trade takes into account the report, and

- (g) There appears to be no way to increase the amount already allowed.
- (h) Rules of 1890, Rule 30.
- (i) The Companies Act, 1890, s. 22.
- (k) *Ibid.* and Rules of 1890, Rule 148.
- (l) Rules of 1890, Rule 148.

any objection to the release urged by any creditor or creditors, and grants or withholds the release.

Appeal from
decision of
Board of Trade.

The decision of the Board of Trade is subject to an appeal to the High Court.(m)

If the release be withheld, an order can be made by the Court charging the liquidator with the consequences of any act or default.(n)

Effect of
release.

If the release be granted, the liquidator is thereby discharged from all liability in respect of any act done or default made by him as liquidator; but the order can be revoked.(o)

(m) The Companies Act, 1890, s. 22.

(n) *Ibid.* ss. 2.

(o) *Ibid.* ss. 3.

CHAPTER VII.

VOLUNTARY WINDING-UP AND WINDING-UP SUBJECT TO
SUPERVISION.*Voluntary Winding-up.*

A COMPANY may be wound up voluntarily :

- (1) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily : When a company may be wound up voluntarily.
- (2) Whenever the company has passed a *special* resolution requiring the company to be wound up voluntarily :
- (3) Whenever the company has passed an *extraordinary* resolution to the effect that it has been proved to its satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.(a)

Notice of any special or extraordinary resolution passed for winding-up a company voluntarily must be given by advertisement in the London Gazette.(b) Advertisement of resolution.

(a) The Companies Act, 1862, s. 129.

(b) *Ibid.* s. 132.

It appears that a liquidator may be appointed at the same meeting as the voluntary winding-up is resolved upon, and this although the notice calling the meeting says nothing about the appointment, for the appointment of a liquidator is only a necessary consequence of a winding-up.(c)

The following consequences ensue upon the voluntary winding-up of a company : (d)

Consequences
of voluntary
winding-up.

- (1) The property of the company is applied in satisfaction of its liabilities *pari passu*, and, subject thereto, is (unless it be otherwise provided by the regulations of the company) distributed amongst the members according to their rights and interests in the company :
- (2) Liquidators are appointed and their remuneration fixed by the company in general meeting :
- (3) Where one person only is appointed, all the provisions in reference to several liquidators apply to him :
- (4) Upon the appointment of the liquidators all the powers of the directors cease, except so far as the company in general meeting, or the liquidators, sanction the continuance of such powers :
- (5) When several liquidators are appointed, every power given by the Act may be exercised by such one or more of them as may be determined at their appointment, or, in default of such determination, by any number not less than two :
- (6) The liquidators may, without the sanction of the Court, exercise all powers by the Companies Act of 1862 given to the official liquidator :
- (7) The liquidators exercise the powers given to

(c) *Indian Zoedone Co.*, 26 Ch. D. 70.

(d) The Companies Act, 1862, s. 133.

the Court of settling the list of contributories, and any list so settled is *prima facie* evidence of the liability of the persons named therein to be contributories :

- (8) The liquidators may call on all or any of the contributories, to the extent of their liability, to pay all or any sum they deem necessary to satisfy the debts and liabilities of the company, and the costs of winding it up, and the liquidators may take into consideration the probability that some of the contributories may partly or wholly fail to pay their respective portions of the same :
- (9) The liquidators must pay the debts of the company and adjust the rights of the contributories amongst themselves.(e)

A voluntary winding-up commences at the time of the passing of the resolution authorising the winding-up.(f) Commencement of voluntary winding-up. Where the resolution is a special one—*i.e.*, a preliminary followed by a confirmatory resolution—the commencement dates from the passing of the confirmatory resolution.(g)

From the commencement of the voluntary winding-up the company ceases to carry on its business, except so far as may be required for the beneficial winding-up. Effect on business of the company.

All transfers of shares, except transfers made to or with the sanction of the liquidators, are void, and the status of members cannot be altered ; but the corporate state and the corporate powers of the company continue until the affairs of the company are wound up.(h) Transfers of shares after.

The liquidator's only remedy for non-payment of a call is by action or by application to the Court to enforce the call under sec. 138.(i) Enforcement of calls.

(e) The Companies Act, 1862, s. 133.

(f) The Companies Act, 1862, s. 130. (g) Buckley, 6th ed. p. 319.

(h) The Companies Act, 1862, s. 131. A contract for a sale of shares in a company being wound up is valid as a contract, although made during the winding-up. Lindley on Company Law, p. 836.

(i) See next page.

Power of appointing liquidators may be delegated to the creditors.

A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may by an extraordinary resolution delegate to its creditors the power of appointing liquidators and supplying vacancies in their number, or by a like resolution enter into any arrangement with respect to the powers to be exercised by its liquidators, and the manner in which they are to be exercised.^(k)

Arrangements when binding on creditors.

Any arrangement entered into between the company and its creditors will be binding on the company if sanctioned by a special resolution of the members, and on the creditors if acceded to by three-fourths in number and value of the creditors,^(l) but any contributory or creditor may appeal to the Court against such arrangement within three weeks from the date of its completion.^(m)

Questions arising in the winding-up may be referred to the Court.

The liquidators, or any contributory of the company, may apply to the Court to determine any question arising in the winding-up, or to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court may, if satisfied by the determination of such question, or the required exercise of powers, will be just and beneficial, accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit.⁽ⁿ⁾

Effect of section.

The object of the section above quoted is that a company and its creditors are to be left to settle their own affairs without coming to the Court at all, either for a compulsory winding-up or a winding-up under supervision, but to provide the liquidator and contributories with a means of access to the Court whenever any

(k) The Companies Act, 1862, s. 135.

(l) *Ibid.* 1862, s. 136.

(m) *Ibid.* s. 137.

(n) *Ibid.* 1862, s. 138. The application must be by petition or motion, unless judge directs it to be by summons. See Gen. Order, November, 1862, Rule 51, and Rules of 1890, Rule 4.

question arises in the winding-up, just in the same way as when any question arises in the case of a compulsory winding-up or under supervision.(o)

The liquidators have power from time to time to summon general meetings of the company, for the purpose of obtaining the sanction of the company, by special or extraordinary resolution, or for any other purpose they think fit; and in the event of the winding-up continuing more than one year, they must summon a general meeting at the end of the first and each succeeding year, and must lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.(p)

General meetings.

Any vacancies in the office of liquidators by death, resignation, or otherwise, may be filled up by the company in general meeting, subject to any arrangement they have entered into with their creditors. The meeting for this purpose can be convened by the continuing liquidators or by any contributory.(q) If from any cause there is no liquidator, the Court may, on the application of a contributory, appoint a liquidator. A liquidator in a voluntary winding-up may also be removed by the Court.(r) As soon as the affairs of the company are fully wound up, the liquidators must prepare an account showing how the liquidation has been conducted and the property of the company disposed of; their next step is to call a general meeting for the purpose of considering the account; the meeting must be called by advertisement, specifying the time, place, and object of the meeting, and must be published for one month at least—previously to the meeting—in the London Gazette.(s)

Vacancies in office of liquidator, how filled.

Accounts of liquidator.

(o) Buckley, 6th ed. p. 327.

(p) The Companies Act, 1862, s. 139.

(q) *Ibid.* s. 140.

(r) *Ibid.* s. 141. The application must be by petition or motion, unless judge directs it to be by summons. Gen. Order, November, 1862, Rule 51.

(s) The Companies Act, 1862, s. 142.

Dissolution of company. The liquidators must make a return to the registrar of such meeting having been held, and of the date at which the same was held, and at the expiration of three months from the date of the registration of such return the company is deemed to be dissolved.^(t) The costs incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, are paid out of the assets of the company in priority to all other claims.^(u)

Costs of winding-up.

Members of a company may transfer their shares at any time before a resolution for voluntary liquidation has been passed, notwithstanding they know that such a resolution is about to be passed.^(x)

After voluntary winding-up when compulsory order can be obtained by a contributory,

After a voluntary winding-up has commenced a compulsory order cannot be made on the application of a *contributory*, unless (1) a case of fraud in passing the voluntary resolution is made out—*e.g.*, that it was carried by the vote of a majority implicated in transactions to be investigated; or (2) the petition is supported by creditors.^(y)

and by a creditor.

The voluntary winding-up of a company is not a bar to the right of any *creditor* to have the company wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up; ^(z) as, for instance, where there have been preferences made by the directors,^(a) or the conduct of the directors requires to be inquired into.^(b)

Where a company is in the course of being wound up voluntarily, and the Court thinks fit to make an order directing the company to be wound up by the Court, the Court may provide for the adoption of all or any of the proceedings in the voluntary winding-up.^(c)

(t) The Companies Act, 1862, s. 143.

(u) *Ibid.* s. 144.

(x) *Taurine Co.*, 25 Ch. D. 118.

(y) Buckley, 6th ed. p. 333; and see *The Gold Co.*, 11 Ch. D. 701.

(z) The Companies Act, 1862, s. 145.

(a) *Re Northumberland and District Banking Co.* 2 De G. & J. 357, 378.

(b) *Re The United Service Co.*, L. R. 7 Eq. 76.

(c) The Companies Act, 1862, s. 146.

CHAPTER VIII.

WINDING-UP SUBJECT TO SUPERVISION.

WINDING-UP subject to the supervision of the Court takes place where a company, in the course of voluntary winding-up, has proceedings taken against it for its winding-up by the Court; in such a case the Court may make an order directing that the voluntary winding-up shall continue, but subject to its supervision, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and conditions as the Court thinks just.^(a) When it takes place.

A petition, praying that a voluntary winding-up may continue subject to the supervision of the Court, is, for the purpose of giving the Court jurisdiction over suits and actions, to be deemed a petition for the winding-up of the company by the Court.^(b) The Court may, in all matters relating to the winding-up under supervision, have regard to the wishes of the creditors or contributories, and may direct general meetings of them to be summoned, for the purpose of ascertaining their wishes. As regards creditors, regard is had to the value of the debts due to them; and as regards contributories, to the number of votes conferred on each by the regulations of the company.^(c) An order for winding-up subject to the supervision of the Court usually continues the voluntary liquidators as official liquidators; but the Court may appoint any liquidator or Petition for. Court will have regard to the wishes of creditors and contributories. Voluntary liquidators usually continued.

(a) The Companies Act, 1862, s. 147.

(b) *Ibid.* s. 148.

(c) *Ibid.* s. 149. Such meeting is summoned by a seven days' notice in writing from the liquidator. Gen. Order, November, 1862, Rule 47.

Powers of
liquidators.

liquidators (in addition to those appointed in the voluntary winding-up), and any liquidators so appointed have the same powers and are subject to the same obligations, and in all respects stand in the same position, as the liquidators appointed by the company.(d) The liquidators appointed in the winding-up subject to supervision may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.(e) But, except as before mentioned, an order for winding up a company under the supervision of the Court is for all purposes to be deemed an order of the Court for winding-up the company by the Court.(f)

Power to
make calls, &c.

The order for winding up subject to the supervision of the Court confers full authority on the Court to make and enforce calls, and to stay all actions, suits, and other proceedings against the company, and generally to exercise any powers which it could have exercised if an order had been made for winding-up the company altogether by the Court.(g)

(d) The Companies Act, 1862, s. 150 and 152.

(e) *Ibid.* s. 151.

(f) *Ibid.*

(g) *Ibid.*

CHAPTER IX.

MATTERS COMMON TO THE THREE METHODS OF
WINDING-UP.

WHERE a company is being wound up voluntarily or subject to the supervision of the Court, the official receiver attached to the Court having jurisdiction to wind up the company, may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding-up, or winding-up subject to supervision, cannot be continued without due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.^(a)

The above power to supersede a voluntary winding-up or a winding-up under supervision by an order for a winding-up by the Court is additional to the right of a creditor or contributory to apply for a compulsory order (*i.e.*, an order for winding-up by the Court) in either of the above cases.^(b) In the case of *Re The Orrell Colliery and Fire Brick Company*^(c) the Master of the Rolls considered that there was power to make an order for winding-up by the Court after a supervision order, but said that there would be few cases in which it would be desirable to do it. The petitioners in that case were small creditors—one for £25 and the other for £19 19s.—and he refused to make an order.

(a) The Companies Act, 1890, s. 14.

(b) The Companies Act, 1862, ss. 79, 145, 147, and 152.

(c) W. N. 1879, 106.

Commence-
ment of wind-
ing-up.

Where a voluntary winding-up is continued under supervision, the winding-up commences at the date of the resolution, and not at the date of the presentation of the petition, for this order is to continue the winding-up, which has already commenced.

In the case of the *West Cumberland Iron and Steel Co.*(d) a petition was presented for the compulsory winding-up of a company, and the same day a provisional liquidator was appointed. Afterwards the company passed an extraordinary resolution to wind up voluntarily. When the petition came on to be heard, an order was made to continue the voluntary winding-up subject to the supervision of the Court. It was held that the winding-up commenced from the passing of the resolution, not from the appointment of the provisional liquidator, and that the Court had no power to alter the date of the commencement.

Transfers of
shares sub-
sequent to
commencement
of winding-up.

Where the company is wound up by the Court or subject to its supervision, all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company, made between the commencement of the winding-up and the winding-up order, are void unless the Court otherwise orders.(e)

Restraining
proceedings
after petition.

The Court may, at any time after the presentation of a petition, and before an order for winding-up a company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceedings against the company upon such terms as it thinks fit.(f)

After order.

After an order for winding-up has been made, no suit, action, or proceeding may be proceeded with or commenced against the company, except with the leave of the Court,(g) and where any company is being wound up by the Court or subject to its supervision, any attachment, sequestration, distress, or execution put in force against

(d) 40 Ch. D. 361.

(e) *The Companies Act* 1862, s. 153.

(f) *Ibid.* s. 85.

(g) *Ibid.* s. 87.

the estate or effects of the company (without such leave) after the commencement of the winding-up is void.^(h) The joint effect of the sections above quoted is to put the creditor who desires to proceed to execution, after a winding-up order or a supervision order, to the necessity of coming to the Court and asking for leave to proceed.⁽ⁱ⁾

The provisions of sect. 163, above quoted, as to attachment, sequestration, distress, and execution, seem to apply equally to a voluntary winding-up as to a winding-up by the Court, or subject to supervision.^(k)

It is a question for the discretion of the Court whether it will allow a creditor to proceed or not, and where a creditor of the company obtains judgment and issues execution *bona fide*, and the sheriff is actually in possession before the presentation of the petition, the creditor will not, except under special circumstances, be restrained from realising his judgment.^(l)

Discretionary with the court to allow an execution creditor to proceed with his judgment or not.

Any application to stay proceedings in an action in the Queen's Bench Division against the company, must be made in the Queen's Bench Division, and not in the Chancery Division.^(m)

Applications to stay proceedings, where made.

Leave to commence an action against a company in liquidation has been given *ex parte*, but the proper practice is to apply for it by summons or motion⁽ⁿ⁾, preferably by summons.

A landlord is not, in respect of his right of distress, a secured creditor.^(o) After the commencement of a winding-up—and apparently, from the cases referred to above, after the commencement of a voluntary winding-up—he can only distrain for his rent with the leave of the Court,

Landlord's right of distress.

(h) The Companies Act, 1862, s. 163. (i) Buckley, 6th ed. p. 234.

(k) *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250; *Thurso New Gas Co.*, 42 Ch. D. 486. This seems to arise from the scheme of the Act of 1862, especially s. 133.

(l) Buckley, 6th ed. p. 235.

(m) *In re Artistic Colour Printing Co.*, 14 Ch. D. 502; and see also *In re General Service Co-operative Stores*, 1891, 1 Ch. 496.

(n) *Western and Brazil Telegraph Co. v. Bibby*, 42 L. T. 821.

(o) *In re Coal Consumers' Association*, L. R. 4 Ch. D. 625.

and this leave will only be given under special circumstances. Even if he distrain within three months before the winding-up order, his distress will be subject to certain preferential claims for rates, taxes, wages, and salary, under the Preferential Payments in Bankruptcy Act, 1888, which will be found set out later on in this chapter.

Proceeds of execution.

Sect. 87 of the Bankruptcy Act, 1869, was held not to apply to executions against a company, and the Bankruptcy Act of 1883 has made no difference in this respect ;(*p*) and the sheriff in executions against a company is not bound to hold the proceeds of the execution for fourteen days before paying them over to the execution creditor.(*q*)

In a voluntary winding-up.

The powers of restraining proceedings apply to a company being wound up under the supervision of the Court,(*r*) and as the Court may, in a voluntary winding-up, on the application of the liquidator or a contributory, exercise all or any of the powers which it may exercise if the company is being wound up by the Court,(*s*) it has, upon such application, power to restrain any proceedings after the commencement of the winding-up.

Winding-up order operates as a notice of discharge.

An order for winding-up operates as a notice of discharge to all persons in the employment of the company,(*t*) unless the business of the company is continued after the winding-up order ;(*u*) and the appointment of a receiver and manager in a debenture-holder's action has the same effect.(*x*) The order will operate as a notice of discharge, even although the liquidator employs the servants in analogous duties, with a view to reconstruction but without continuing the business.(*y*)

(*p*) See 46 & 47 Vict. c. 52, s. 46.

(*q*) *In re Withernsea Brickworks*, 16 Ch. D. 337, overruling *In re Printing and Numerical Registering Co.*, 8 Ch. D. 535.

(*r*) The Companies Act, 1862, ss. 148, 151.

(*s*) *Ibid.* s. 138.

(*t*) *Chapman's Case*, L. R. 1 Eq. 346.

(*u*) *Ex p. Harding*, L. R. 3 Eq. 341.

(*x*) *Reid v. Explosives Co.*, 19 Q. B. D. 264.

(*y*) *In re Oriental Bank Corporation, Macdonall's Case*, 32 Ch. D. 366.

The Companies Act, 1862, contains powers for companies being wound up to make arrangements or compositions with their creditors, but as a more easy and effectual means has been provided by the Joint Stock Companies Arrangement Act, 1870,^(z) it will only be necessary to refer to the provisions of this last Act, which empowers the Court, where any compromise or arrangement is proposed between a company in the course of being wound up and its creditors, or any class of its creditors (in whatever way the company is being wound up), on the application of any creditor or the liquidator, to order that a meeting of such creditors be summoned, in such manner as the Court directs, and if a majority in numbers representing three-fourths in value of the creditors present either in person or by proxy at such meeting, agree to any arrangement or compromise, such arrangement or compromise, if sanctioned by an order of the Court, is binding on all such creditors or class of creditors, and also on the liquidators and contributories of the company.

Arrangements
by a company
with its
creditors.

One of the most important powers of the liquidators under a voluntary winding-up is that of selling the business and goodwill of the company being wound up to another company, in consideration of shares, policies, or other like interests. This power is largely resorted to at the present day for the purpose of effecting what are known as "reconstruction" and "amalgamation" schemes. It can only be exercised with the sanction of a special resolution of the company being wound up, but the sale, if so sanctioned, is binding on the minority. Any dissentient member may, however, by notice in writing addressed to the liquidators, and left at the registered office of the company not later than seven days after the passing of the resolution, require the liquidators at their option, either to abstain

Liquidators
may accept
shares, &c., as
a consideration
for the sale of
the company.

Dissentient
shareholder
cannot be
compelled to
take shares.

(z) 33 & 34 Vict. c. 104, s. 2. "Creditors" include debenture holders and other secured creditors. *In re Alabama &c., Railway Co.*, 1891, 1 Ch. 213.

from carrying the resolution into effect, or to purchase his interest.(a) The price to be paid for the interest of the dissentient member may be determined by agreement, or, if no agreement can be come to, by arbitration.(b)

Reconstruction Companies are often reconstructed in order to enable them to extend the objects or powers comprised in their memoranda of association,(c) or to reduce or return capital without the necessity of obtaining the sanction of the Court, but the purpose for which the process is most frequently adopted is that of raising fresh capital where it is anticipated that new shares will not be adequately subscribed for. The scheme in such a case consists generally in the formation of a new company, which takes over all the assets of the old company, the purchase price being satisfied by the allotment of shares in the new company for distribution among the old shareholders *pro rata*. These shares are generally credited with a part only of their nominal amount paid up; the balance, when called up, provides the company with the requisite fresh capital. A reference to the sections quoted above (which are also applicable to the "amalgamation" of two or more companies) will show in more detail by what formalities the transaction must be accompanied.(d)

Novation.

Where the business of one company has been taken over by another, a question frequently arises as to the "novation" of contracts; or, in other words, how far the creditors have agreed to accept the security of the new company for payment of their debts, and to release the old one. A contract, in order to constitute such a release, need not be in writing, but must be tripartite; the

(a) The Companies Act, 1862, s. 161.

(b) *Ibid.* s. 162.

(c) The provisions of the Companies Memorandum of Association Act, 1890, will render reconstruction for this purpose much less frequent in future. See *ante*, p. 31 to 34.

(d) Reference may also be made to the case of *Postlethwaite v. Port Phillip Co.*, 43 Ch. D. 452, in which a scheme of this kind (the provisions of which are fully set forth in the report) was upheld by the Court notwithstanding objections taken to some of its provisions.

creditor, the original debtor, and the new debtor, must all be parties to it, and in each case it is a question of fact whether such agreement has been entered into or not.^(e)

The Life Assurance Companies Act, 1872, s. 7,^(f) provides that where a company has transferred its interest, or been amalgamated with another company, the mere fact that a policy-holder has paid premiums to the new company shall not be deemed to be an abandonment of his rights against the old one. To do this, the abandonment of the old company and acceptance of the liability of the new must be signified by writing, signed by the policy-holder or by his lawfully authorised agent. What will amount to a novation in the case of a life assurance company.

An order for payment will not be made against a bankrupt contributory, and payment in such case can only be enforced by the Court of Bankruptcy.^(g)

The Court has power, whether a Company is being wound up, by the Court, or subject to supervision,^(h) to arrest a contributory about to abscond.⁽ⁱ⁾ Arrest of absconding contributory.

All debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to prove against the company.^(k) The rules of bankruptcy with regard to the proof of debts and liabilities are by the 10th section of the Judicature Act, 1875, made applicable in the winding-up of insolvent companies, and reference may therefore be usefully made to sect. 37 of the Bankruptcy Act, 1883, for a further description of proveable debts. Debts proveable.

The liquidator in a winding-up is entitled to deliver interrogatories to a person claiming to prove, in the same way as in an action.^(l) Liquidator may deliver interrogatories.

The rule as to a secured creditor formerly was that he was entitled to prove for the whole amount due to him at Secured creditor.

(e) Buckley, 6th ed. p. 372.

(f) 35 & 36 Vict. c. 41.

(g) *Mitchell's Case*, L. R. 5 Ch. 400.

(h) The Companies Act, 1862, s. 151. (i) *Ibid.* s. 118.

(k) *Ibid.* s. 158.

(l) *In re Alexandra Palace Co.*, 16 Ch. D. 58.

the time of sending in his claim, and not merely, as in bankruptcy, for the balance remaining due after realising or valuing his security.^(l) But this rule was altered by the Judicature Act, 1875,^(m) which provides that in the winding-up of a company the same rules shall be observed, as to the rights of secured and unsecured creditors, as may be in force, for the time being under the law of bankruptcy, with respect to the estates of persons adjudicated bankrupt.

This section was the subject of many conflicting decisions, and the question who are or are not secured creditors can hardly be considered to be settled. The case of an execution creditor has, as already pointed out,⁽ⁿ⁾ been held not to come within the section, and the preferential right of the Crown to payment in priority to all other creditors remains unaffected by the enactment.^(o) Again, the bankruptcy rule as to reputed ownership is not imported into the winding-up of companies.^(p)

Preferential
payments in
winding-up.

The question as to the priority of rates, taxes, and servants' wages, which was for some time doubtful, was set at rest by the Companies Act, 1883,^(q) now repealed, but practically re-enacted by the Preferential Payments in Bankruptcy Act, 1888.^(r) Under this Act the following debts rank equally between themselves, and are paid in full, unless the assets of the company are insufficient to meet them, in which case they abate in equal proportions between themselves:^(s)—

- (a) All parochial or other local rates due from the company at the commencement of the winding-up, and having become due and payable within twelve months next before that time,

(l) Buckley on the Companies Acts, 6th ed. p. 366.

(m) 38 & 39 Vict. c. 77, s. 10.

(n) *Ante* p. 134.

(o) *Oriental Bank Corporation*, 28 Ch. D. 643.

(p) *Gorringe v. Irwell India Rubber and Gutta Percha Works*, 34 Ch. D. 128. See also *Colonial Bank v. Whinney*, 11 App. Cas. 426.

(q) 46 & 47 Vict. c. 28.

(r) 51 & 52 Vict. c. 62.

(s) 51 & 52 Vict. c. 62, s. 1, ss. 2.

and all assessed taxes, land tax, property or income tax assessed on the company up to the 5th day of April next before the commencement of the winding-up, and not exceeding in the whole one year's assessment :

- (b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the commencement of the winding-up, not exceeding £50 ; and,
- (c) All wages of any labourer or workman, not exceeding £25, whether payable for time or piece-work in respect of services rendered to the company during two months before the commencement of the winding-up : Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service, up to the commencement of the winding-up.

Subject to the retention of such sums as may be necessary for the costs of the winding-up, the debts above mentioned are to be discharged forthwith so far as the assets of the company are sufficient to meet them.^(t)

In the event of a landlord or other person distraining or having distrained on any goods or effects of a company being wound up within three months next before the date of the winding-up order, the above-mentioned debts are a first charge on the goods or effects distrained on or the proceeds of sale if they have been sold.

The landlord or other person paying money in respect of such charge has the same right of priority as the person to whom such payment is made.^(u)

(t) 51 & 52 Vict. c. 62, 1. ss. 3.

(u) *Ibid.* ss. 4.

In a case decided since the Act of 1883 it was held that the provisions of sect. 4 of the Act applied to a winding-up commenced before the Act came into operation, and that the servant was entitled to payment of the wages specified by the Act, but the payment was not to disturb the past dividends.^(x)

Charge of
"miners" in
the Stannaries.

Under the Stannaries Act, 1887,^(y) miners (which term includes all artisans, labourers, and other persons working in and about a mine, except the purser, secretary, agent, or manager) have a first charge upon all mining effects in and about a mine in the Stannaries, and also upon all moneys in the courthouse, or in charge of the purser, agent, or secretary, or other person, on behalf of the company, or at the credit of the company at its bankers, and upon all other assets whatever of the company in respect of the mine; the charge is for wages in relation to the mine not exceeding three months' wages for each person. This charge has priority over all claims for rent, royalties, dues, or otherwise, by the lessors of the mine, or by mortgagees or judgment, execution or other creditors of the company.^(z)

Extraordinary
powers of
Court to
obtain infor-
mation about the
property of a
company.

Under sect. 115 of the Companies Act, 1862, extraordinary powers are given to the Court to summon before it and obtain information from persons suspected to have or to be able to give information about the property of the company. Power is given by that section to the Court, after it has made a winding-up order, to summon before it any officer of the company, or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company. Such officer

(x) *Anglo-French Co-operative Society, Limited*, 50 L. T. R. 754.

(y) 50 & 51 Vict. c. 43.

(z) *Ibid.* s. 4. The Act also contains (ss. 5, 7, and 11) provisions for securing prompt payment of wages to "miners," and for securing to them the benefit of their charge.

or person may be required to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company. Any person properly summoned and not appearing may be apprehended.

Under sec. 10 of the Companies (Winding-up) Act, 1890,^(a) the Court has still further powers. By that section, where in the course of a winding-up of a company it appears that any person who has taken part in the formation or promotion of a company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied, or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks fit, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Power of
Court to
assess
damages,
against
delinquent
directors,
officers, and
promoters.

The Court has this power in any winding-up, whether compulsory, under supervision, or voluntary, and whenever such winding-up has commenced, and notwithstanding that the offence is one for which the offender may be criminally responsible.^(b)

Applications under this section, in any Court other than the High Court, are to be by motion to the Court. In the High Court the applications follow the practice

Applications
how made.

(a) 53 & 54 Vict. c. 63. Sec. 10 re-enacts in a more extended form sec. 165 of the Companies Act, 1862. Sec. 165 of the Companies Act, 1862, is repealed by sec. 31 of the Companies (Winding-up) Act, 1890.

(b) The Companies Act, 1890, s. 10.

adopted under sect. 165 of the Companies Act of 1862 ; *i.e.*, a summons or motion can be made in the winding-up against the person sought to be made liable, or an action brought against him by the liquidator, according to the circumstances of the case.(c)

Notice of motion.

Where the application is by motion, eight days' notice must be given, and a copy of every report and affidavit intended to be used in support of the motion must be served four days before the hearing.(d)

Difference between sec. 10 and repealed section of Act of 1862. Powers not to be used to enforce private rights.

The chief difference between this section and sect. 165 of the Companies Act, 1862, which is repealed, is that the present section includes promoters.

The powers given by the above section are given for the more beneficial winding-up of the company, and are not to be used merely to give a plaintiff, in an action to enforce his individual right, undue means of discovery.(e)

Liquidator a trustee for all the creditors.

It appears from recent decisions that a winding-up order constitutes the liquidator a trustee for the creditors, so as to prevent the Statute of Limitations from barring their debts.(f)

Assignee of a chose in action.

The assignee of any chose in action belonging to the company may bring or defend any action or suit relating to such chose in action in his own name.(g)

Fraudulent preference.

Any act relating to property which would, if done by or against any individual trader, be deemed, in the event of his bankruptcy, to have been done by way of undue or fraudulent preference of the creditors of such trader, is, if made or done by or against any company, deemed, in the event of the company being wound up, to be done by way of undue or fraudulent preference of the creditors of the company, and is invalid accordingly ; and for this

(c) Rules of 1890, Rule 78.

(d) *Ibid.* Rule 79.

(e) *In re Imperial Continental Water Corporation*, 33 Ch. D. 314. See also, *In re London and Lancashire Paper Mills Co.*, W. N. 1888, 63 ; 59 L. T. 562.

(f) Buckley, 6th ed. p. 271.

(g) The Companies Act, 1862, s. 157.

purpose, the presentation of the petition, in the case of a company being wound up by or subject to the supervision of the Court, and a resolution for winding-up the company in the case of a voluntary winding-up, are deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of all its creditors is void to all intents.^(h)

The Court can compel any past or present director, liquidator, or officer of a company who has been guilty of any misfeasance or breach of trust (notwithstanding that the offence is one for which the offender is criminally responsible), to repay any monies misapplied or retained by him, together with interest, or to contribute such sums to the assets of the company as the Court thinks fit.⁽ⁱ⁾ In addition to this, any director, officer, or contributory who destroys, mutilates, alters, or falsifies, or makes or is privy to any false or fraudulent entry in, any register or other document, with intent to defraud or deceive any person, is guilty of a misdemeanour, and is liable upon conviction to imprisonment for any term not exceeding two years, with or without hard labour.^(k) The prosecution must be directed by the Court,^(l) and the application for such direction must be made by petition.^(m)

The Court has jurisdiction, by placing restrictions on a voluntary liquidator, or by dispensing with restrictions on an official liquidator, almost to turn a winding-up under supervision into a winding-up by the Court and *vice versa*.⁽ⁿ⁾

(h) The Companies Act, 1862, s. 164; and see hereon, *Willmott v. London Celluloid Co.*, 34 Ch. D. 147.

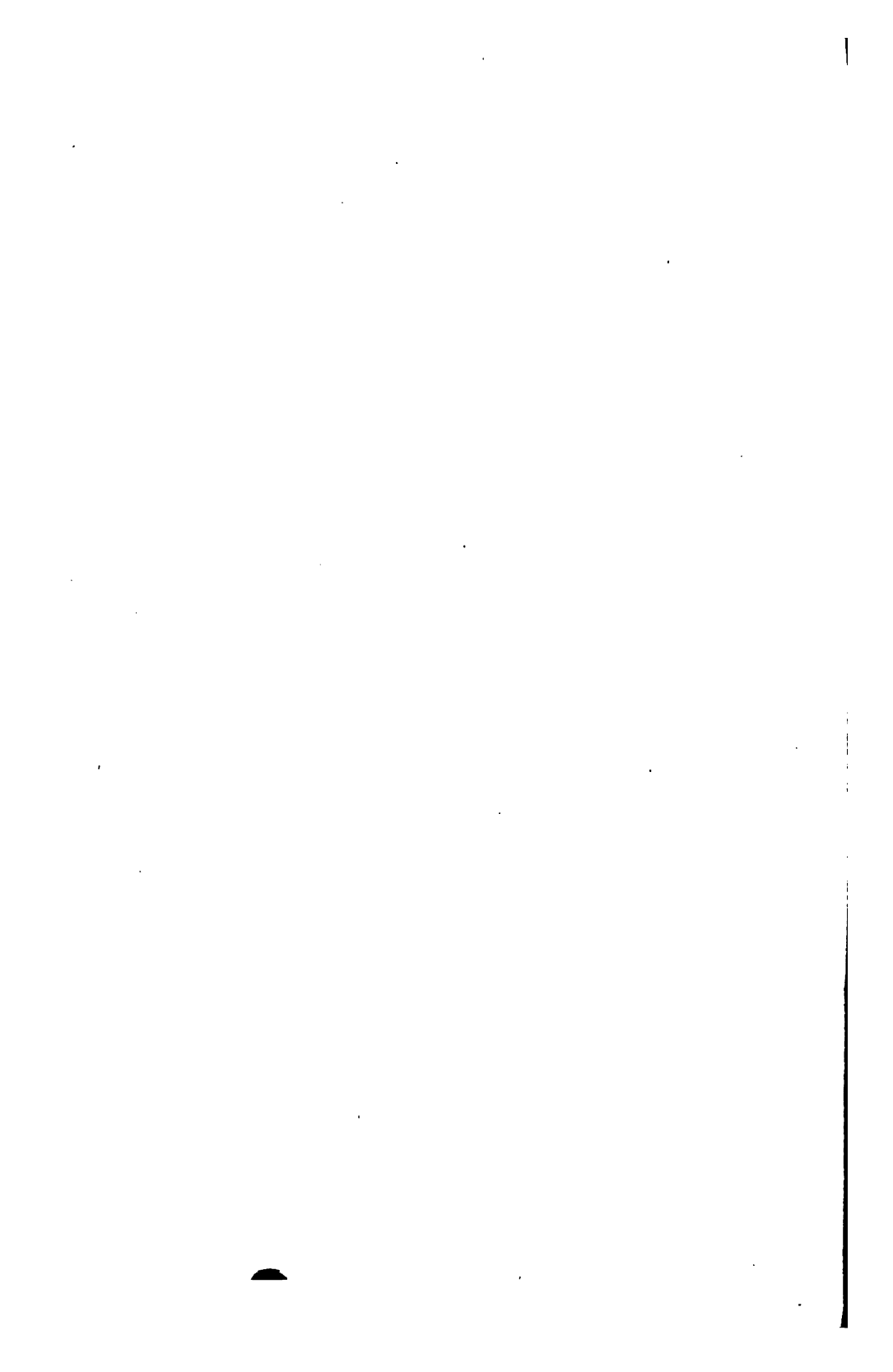
(i) *Ibid.*

(k) The Companies Act, 1862, s. 166. As to punishment of fraudulent directors, see 24 & 25 Vict. c. 96, ss. 81-84. Frauds by directors under that statute are misdemeanours punishable with a maximum penalty of seven years' penal servitude.

(l) The Companies Act, 1862, ss. 167, 168.

(m) Gen. Order, November, 1862, Rule 51.

(n) *In re Watson & Sons, Limited*, 1891, 2 Ch. 55.



APPENDIX I.

COMPANIES (WINDING-UP) ACT, 1890.

[53 & 54 VICT. CH. 63.]

ARRANGEMENT OF SECTIONS.

SECTION

1. Jurisdiction to wind up companies.
2. Conduct of winding-up business in High Court.
3. Transfer of proceedings.
4. Provisions as to liquidator.
5. Power to appoint special manager.
6. Meeting of creditors.
7. Statement of company's affairs.
8. Report on winding-up and proceedings thereupon.
9. Committee of inspection.
10. Power of Court to assess damages against delinquent directors, officers, and promoters.
11. Payment of money into Bank of England.
12. Powers of liquidator.
13. Delegation to liquidator of certain powers of Court.
14. Power for official receiver to apply as to voluntary winding-up.
15. Information as to pending liquidations.
16. Investment of surplus funds on general account.
17. Separate accounts of particular estates.
18. Interests on balances above two thousand pounds.

SECTION

19. Certain receipts and fees to be applied in aid of expenditure.
20. Audit of liquidator's accounts.
21. Books to be kept by liquidator.
22. Release of liquidators.
23. Discretionary powers of liquidator, and control thereof.
24. Appeal to Court against liquidator.
25. Control of Board of Trade over liquidators.
26. General rules and fees.
27. Officers and remuneration.
28. Annual accounts of receipts and expenditure in respect of winding-up proceedings.
29. Returns by officers.
30. Proceedings of Board of Trade.
31. Application of Act.
32. Interpretation of terms.
33. Repeal.
34. Commencement of Act.
35. Short title.

SCHEDULES.

CHAPTER 63.

An Act to amend the Law relating to the Winding-up of Companies in England and Wales.

(18th August 1890.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1) The Courts having jurisdiction to wind up companies in England and Wales shall be the High Court, the Chancery Courts of the counties palatine of Lancaster and Durham, the County Courts, and the Stannaries Court. Jurisdiction to wind up companies.

(2) Where the amount of the capital of a company paid up, or credited as paid up, exceeds ten thousand pounds, a petition to wind up the company, or to continue the winding-up of the company under the supervision of the Court, shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the Palatine Courts aforesaid, either to the High Court or to the Palatine Court having jurisdiction.

(3) Where the amount of the capital of a company paid up, or credited as paid up, does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a County Court having jurisdiction under this Act, a petition to wind up the company or to continue the winding-up of the company under the supervision of the Court shall be presented to that County Court.

(4) Provided that where a company is formed for working mines within the Stannaries, and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding-up of the company under the supervision of the Court, shall be

presented to the Stannaries Court, whatever may be the amount of the capital of the company, and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a County Court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other County Court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide that a County Court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6) Every Court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the Court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof, or otherwise in relation to the winding-up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

Conduct of
winding-up
business in
High Court,
36 & 37 Vict.
c. 66.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Transfer of
proceedings.

3. (1) The winding-up of a company, or any proceedings therein, may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor, or by any judge of the High Court having jurisdiction under this Act, as regards

any case within the jurisdiction of any other Court, by the judge of that Court.

(3) If any question arises, in any winding-up proceedings in a County Court or in the Stannaries Court which all the parties to the proceeding, or which one of them and the judge of the Court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

4. (1) On an order being made by the Court for winding-up a company the officer hereinafter mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

Provisions
as to
liquidator.

(2) The said officer shall be the official receiver, if any, attached to the Court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall, for the purpose of his duties under this Act, be styled the official receiver.

(3) When a person other than the official receiver is appointed liquidator of a company he shall be styled liquidator, and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint stock companies and given security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

(4) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5) The official receiver may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.

(6) Where an application is made to the Court to appoint a receiver on behalf of the debenture-holders or other creditors of a company, the official receiver may be so appointed.

Power to
appoint
special
manager.

5. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Meeting of
Creditors.

6. (1) When the Court has made an order for winding-up a company, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(a) determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and

(b) determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of such committee if appointed.

The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions, the Court shall

decide the difference, and make such order thereon as the Court may think fit.

(2) The provisions of the First Schedule to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

(3) In case a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the company.

7. (1) Where the Court has made an order for winding-up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. Statement of company's affairs.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the order for winding-up the company, as the official receiver, subject to the direction of the Court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint.

(4) Any person making, or concurring in making, the statement or affidavit required by this section, shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court.

5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall

be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly, on the application of the liquidator or of the official receiver.

Report on
winding-up
and pro-
ceedings
thereupon.

8. (1) When the Court has made an order for winding-up a company, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor, with or without counsel.

(5) The liquidator where the official liquidator is not the liquidator, and any creditor or contributory of the company, may also take part in the examination, either personally or by solicitor or counsel.

(6) The Court may put such questions to the person examined as to the Court may seem expedient.

(7) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The person shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just, for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) A public examination under this section may, if the Court so directs, and subject to general rules, be held before any judge of County Courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine Court, before a registrar of that Court, and the powers of the Court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

Committee
of inspection.

9. (1) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(2) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories of which seven days' notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may by resolution re-appoint the same, or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9) If there be no committee of inspection, any act or thing, or any direction or permission by this Act authorised or

required to be done or given by the committee, may be done or given by the Board of Trade on the application of the liquidator.

10. (1) Where in the course of the winding-up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just.

Power of Court to assess damages against delinquent directors, officers, and promoters.

(2) The provisions of this section shall apply in the winding-up of any company under the Companies Acts, whether the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

11. (1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

Payment of money into Bank of England.

(2) Every liquidator of a company which is being wound up by order of the Court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company, or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(4) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

(6) No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

Powers of
liquidator.

12. (1) The liquidator of a company which is being wound up by the Court may, with the sanction either of the Court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine or section one hundred and sixty of the Companies Act, 1862.

25 & 26 Vict.
c. 89.

(2) The liquidator of any such company may, without the sanction of the Court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five of the Companies Act, 1862.

(3) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with

respect to any exercise or proposed exercise of any of those powers.

(4) The liquidator of a company which is being wound up by order of the Court, may, with the sanction either of the Court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections ninety-one, ninety-eight, ninety-nine, one hundred, one hundred and two, and one hundred and seven of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court.

Delegation to liquidator of certain powers of Court.

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

14. Where a company is being wound up voluntarily or subject to the supervision of the Court, the official receiver attached to the Court having jurisdiction to wind up the company may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.

Power for official receiver to apply as to voluntary winding-up.

15. (1) If the winding-up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to

Information as to pending liquidations.

inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(2) If a liquidator makes a default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(3) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate of receipt for the moneys so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(4) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(5) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

(6) This section shall apply whether the winding-up of the company has commenced before or after the commencement of this Act.

16. (1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required

Investment
of surplus
funds on
general
account.

for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same, or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding-up of companies.

17. (1) An account shall be kept by the Board of Trade of the receipts and payments in the winding-up of each company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

Separate accounts of particular estates.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested formed part.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two

Interests on
balances
above two
thousand
pounds.

thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

Certain
receipts and
fees to be
applied in
aid of ex-
penditure.

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Audit of
liquidator's
accounts.

20. (1) Every liquidator of a company which is being wound up by order of the Court shall, at such times as may be prescribed, but not less than twice in each year, during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor or of any person interested.

(5) The Board of Trade shall cause the account, or a summary thereof, when audited, to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

Books to be
kept by
liquidator.

21. Every liquidator of a company which is being wound up by order of the Court shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent, inspect any such books.

22. (1) When the liquidator of a company which is being

wound up by order of the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested, against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

Release of
liquidators.

(2) Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

23. (1) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the Court shall, in the administration of the property of the company, and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

Discretionary
powers of
liquidator,
and control
thereof.

(2) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of

ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up.

(4) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to
Court against
liquidator.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the Court, he may apply in the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of
Board of
Trade over
liquidators.

25. (1) The Board of Trade shall take cognisance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by order of the Court to answer any inquiry made by them in relation to any winding-up in which the liquidator is engaged, and may, if the Board think fit, apply to the Court to examine on oath the liquidator or any other person concerning the winding-up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court.

General
rules and
fees.

26. (1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

(2) All general rules made under the foregoing provision of this section shall be laid before Parliament within three

weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(5) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge" and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any direction as to the remuneration to be allowed to officers in that Court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

27. (1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed. Officers and remuneration.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

Annual
accounts of
receipts and
expenditure
in respect of
winding-up
proceedings.
38 & 39 Vict.
c. 77.

28. (1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and for the purpose of the account to be laid before Parliament the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns by
officers.

29. (1) The officers of the Courts acting in the winding-up of companies shall make to the Board of Trade such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

(2) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act, to be prepared and laid before both Houses of Parliament.

Proceedings
of Board of
Trade.

30. (1) All documents purporting to be orders or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant-secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade, that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

Application
of Act.

31. (1) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2) For the purposes of this Act a company shall not be deemed to be wound up by order of the Court if the order

is to continue a winding-up under the supervision of the Court.

(3) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

32. (1) In this Act, unless the context otherwise requires, Interpretation of terms.

“The Companies Acts” means the Companies Act, 1862, and the Acts amending the same.

“General rules” means general rules made under this Act, and includes forms.

“Prescribed” means prescribed by general rules.

“Stannaries Court” means the Court of the Vice-Warden of the Stannaries.

(2) In Part IV. of the Companies Act, 1862, and in this 25 & 26 Vict. c. 89. Act, the expression “the Court,” when used in relation to a company shall, unless the contrary intention appears, mean the Court having jurisdiction under this Act to wind up the company.

(3) For the purposes of this Act the expression “registered office of a company” shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding-up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862, is to be deemed the registered office of the company for the purpose of the winding-up thereof.

33. The enactments mentioned in the Second Schedule to this Repeal. Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule.

34. This Act shall come into operation on the first day of Commence-
ment of Act. January, one thousand eight hundred and ninety-one.

35. (1) This Act may be cited as the Companies (Winding-up) Act, 1890. Short title.

(2) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

FIRST SCHEDULE.

Meetings of Creditors and Contributories.

Section 6.

(1) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the Court may approve, unless a special manager has been appointed; in which case such meetings shall be held within one month from the date of such order, or within such further time as aforesaid.

(2) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper. Notice of such meeting shall also be sent by the post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

(5) The official receiver, or some person nominated by him shall be the chairman at the meetings.

(6) A person shall not be entitled to vote as a creditor unless

he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

(7) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(8) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

(9) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(10) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the

creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12) A creditor or a contributory may vote either in person or by proxy.

(13) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(15) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act therein stands to the creditor or contributory.

(16) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and
- (b) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(17) A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

(18) Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been

exercised, notwithstanding any resolution of the committee of inspection, or of the creditors or contributories, to the contrary.

(19) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

(20) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(21) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week, at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(24) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided, that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator, he may use the said proxies and vote accordingly.

Section 31.

SECOND SCHEDULE.

Enactments Repealed as to England and Wales.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89 ,	The Companies Act, 1862	Sec. 81. In sec. 92 the words " The Court shall determine whether any and what se- curity , is to be given by any offi- cial liquidator on his appointment."
30 & 31 Vict. c. 131 .	The Companies Act, 1867	Sec. 97. Sec. 165. Secs. 41 to 46.

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GENERAL RULES,
MADE PURSUANT TO SECTION 26 OF THE
WINDING-UP ACT, 1890.

Preliminary.

1. These Rules may be cited as "The Companies Winding-up Rules, 1890." They shall come into operation on the first day of January one thousand eight hundred and ninety-one. Short title
and com-
mencement.

2. In these Rules, unless the context or subject-matter otherwise requires,—

(a) "The Acts" means the Companies Acts, 1862 to 1890. Interpreta-
tion of terms.

"The Company" means a company which is being wound up or against which proceedings to have it wound up have been commenced.

"The Court" includes a Judge of the Court, and a chief clerk of the Chancery Division of the High Court, or other officer of the Court when exercising the powers of the Courts pursuant to the Acts or these Rules, or the practice of the Court.

"Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the London Gazette.

"Judge" means in the High Court the Judge to whom the petition to wind up the company is assigned, and in any other Court the Judge thereof or officer who exercises the powers of the Judge thereof.

"Proceedings" means the proceedings in the winding-up of a company under the Acts.

"Official receiver" includes any officer appointed by the Board of Trade to discharge the duties of official receiver under the Acts.

"Registrar" as applied to a County Court, includes,

where there are joint registrars, either of such registrars, or a deputy-registrar ; and as applied to any Court other than the High Court, means and includes the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a registrar or chief clerk.

“Sealed” means sealed with the seal of the Court.

“Taxing officer” means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

“Liquidator” includes an official receiver when acting as liquidator.

- (b) In the application of these Rules to any Court other than the High Court, the registrar may, under the general or special directions of the Judge, hear and determine any application or matter which under the Acts and these Rules may be determined in Chambers.

Use of forms
in Appendix.

3. (1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the London Gazette.

Court and Chambers.

Proceedings
in High
Court.

4. In the High Court—

(1) All matters and applications to the Court or a Judge in the winding-up of a company as to which the procedure and practice is not altered by the Com-

panies (Winding-up) Act, 1890, and these Rules, and which according to the practice of the Court or the directions of the Judge have been heard in Court or in Chambers, shall continue to be so heard.

- (2) Subject to the provisions of the Companies (Winding-up) Act, 1890, and these Rules, applications to the Court under the said Act and these Rules shall be heard in Court or in Chambers according as the Judge shall by any general or special directions order. Provided that appeals to the Court from the official receiver and Board of Trade and liquidator shall be brought by notice of motion to the Court, pursuant to the Rules of the Supreme Court with reference to motions.

5. In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court:—

Proceedings
in Courts
other than
High Court.

- (a) Petitions.
- (b) Public examinations.
- (c) Applications under section 167 of the Companies Act, 1862.
- (d) Applications to rectify the register.
- (e) Appeals from the official receiver and Board of Trade.
- (f) Appeals from any decision of the liquidator.
- (g) Applications relating to the admission or rejection of proofs.
- (h) Proceedings under section 10 of the Companies (Winding-up) Act, 1890.

6. Subject to the provisions of the Acts and Rules, any matter or application in a Court other than the High Court may at any time, if the Judge thinks fit, be adjourned from Chambers to Court or from Court to Chambers; and if all the contending parties require any matter or application to be adjourned from Chambers into Court, it shall be so adjourned.

Adjourn-
ment from
Chambers to
Court, and
vice versa.

Proceedings.

7. (1) Every proceeding in Court or in Chambers under the Acts shall be dated, and shall be intituled "In the matter of the Companies Act, 1862 to 1890," with the name

Proceedings,
how inti-
tuled.
Forms 1 and 2

of the Court in which it is taken, and of the Company to which it relates. Numbers and dates may be denoted by figures.

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it by the proper officer, and all subsequent proceedings in the same matter shall bear the same number.

Transfer by
Judge of
High Court
[s. 3 of Act
of 1890].
Form 3.

8. A Judge of the High Court to whom the exercise of the jurisdiction to wind up companies is assigned may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court. Where the transfer is to the High Court, the winding-up shall be assigned to the Judge who made the order of transfer.

Transfer by
Judge of
Court other
than High
Court.
Form 3.

9. A Judge of any Court having jurisdiction to order the winding-up of a company, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding-up of a company, not being the High Court or a Palatine Court.

Notice to
official
receiver.

10. Notice of an application for a transfer of proceedings shall be served on the official receiver before the hearing thereof.

Transmis-
sion of
order of
transfer.

11. When an order of transfer has been made the person on whose application the order is made shall, if the transfer is to the High Court, lodge with the chief clerk of the Judge to whom the winding-up becomes assigned, and if the transfer is to any other Court with the registrar of that Court, a sealed copy of the order of transfer.

Transfer of
official
receiver's
duties.

12. Where the proceedings in any winding-up are transferred by any Court, the official receiver of the Court to which such proceedings are transferred shall become the official receiver in the winding-up in place of the official receiver of the Court from which the proceedings are transferred.

Transmis-
sion of
records.

13. Where any proceedings are transferred from a Court to any other Court, the records of proceedings shall, if the transfer is to the High Court, be transmitted to the chief clerk of the Judge to whom the winding-up becomes assigned,

and if the transfer is to any other Court to the registrar of that Court.

14. As soon as the chief clerk of the Judge (if the transfer is to a Judge of the High Court) or the registrar of the Court (if the transfer is to any other Court) has received the records of proceedings from the Court from which the transfer is made, he shall give notice of the transfer to the official receiver of the Court to which the proceedings are transferred, who shall give notice of the transfer to the Board of Trade. When a winding-up is transferred from one Court to another, it shall receive a new distinctive number.

Notice of transfer to official receiver and Board of Trade.
Form 4.

15. Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction under the Acts, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district or any part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up business pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and thereupon the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

Transfer of jurisdiction of County Court and pending business.

Witnesses and Depositions.

16. If the Court or the officer of the Court before whom any examination is under the Acts and these Rules directed to be held, shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined under the Acts and Rules in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment; provided that where the application is made by the official receiver he shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a

Shorthand notes, &c.
Forms 5, 6, 7.

sum not exceeding one guinea a day, and where the Court appoints a shorthand writer a sum not exceeding 8d. per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the company as may be directed by the Court.

Committal of
contuma-
cious witness.
Form 39.

17. (1) If a person examined before a registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the judge, and upon such report being made the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The registrar or officer shall, before the conclusion of the examination, at which the default in answering is made, name the time when and the place where the default will be reported to the Judge; and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Sittings of Courts.

Place of
sitting of
County
Court.

18. Subject to the orders of the Lord Chancellor, the place of sitting of each County Court having jurisdiction under the Acts shall, for the purpose of such jurisdiction, be the town in which the Court holds its sittings for the general business of the Court, under the provisions of the County Courts Act, 1888.

Times for
holding
Courts
other than
the High
Court.

19. Subject to the provisions of the Acts, the times of the sitting of each Court other than the High Court in matters of the winding-up of companies shall be those appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

Service and Execution of Process.

20. (1) It shall be the duty of the high bailiff of a County

Court to serve such orders, summonses, petitions, and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in Chambers); and to do and perform all such things as may be required of him by the Court. Duties of bailiff, &c.

(2) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Acts or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

21. (1) All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post-office, and notwithstanding the same may be returned by the post-office. Service.

Taxation of Costs.

22. The provisions of the following Rules, numbered 23 to 30, shall apply to the taxation and allowance of costs payable by or to the official receiver or liquidator, or which are to be paid out of the assets of the company. Taxation of costs payable by or to official receiver or liquidator or by company. Notice of appointment.

23. Every person whose bill or charges is or are to be taxed shall in all cases give not less than four days' notice of the appointment to tax the same to the official receiver and to the liquidator (if any). Notice of appointment.

24. The bill or charges, if incurred prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator, three clear days before the application for the appointment to tax the same is made. The official receiver or the liquidator, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the proper taxing officer. Lodgment of bill.

25. Every person whose bill or charges is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill of charges so to be taxed, on payment at the rate of 4d. per folio, which payment shall be charged on the assets of the company. The official receiver Copy of bill to be furnished.

shall call the attention of the liquidator to any items which in his opinion ought to be disallowed or reduced, and may attend or be represented on the taxation.

Applications
for costs.

26. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding—

(1) Such party or person shall serve notice of his intended application on the official receiver, and, if a liquidator has been appointed, on the liquidator.

(2) The official receiver and liquidator may appear on such application and object thereto.

(3) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Certificate
of taxation
Form 10.

27. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his certificate of taxation. The bill of costs, charges, and expenses shall be filed.

Register of
bills taxed.
Forms 9 and
11.

28. Every taxing officer shall keep a register of all bills taxed by him in winding-up under these Rules, and shall, within fourteen days after the 31st day of October in each year, make a return to the Board of Trade of all bills taxed by him during the twelve months preceding such 31st day of October.

Certificate
of employ-
ment.

29. Before the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator, is or are taxed, a certificate in writing, signed by the official receiver or liquidator, as the case may be, shall be produced to the taxing officer, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor a copy of the resolution or other authority sanctioning the employment.

Review of
taxation at
instance of
Board of
Trade.

30. (1) Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a registrar of a Court other than the High Court, the Board of Trade may require the

taxation to be reviewed by a taxing master of the Chancery Division of the High Court.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned, they shall give notice to the person whose bill has been taxed, and shall apply to the taxing master of the Chancery Division of the High Court to appoint a time for the review of such taxation, and thereupon such taxing master shall appoint a time for the review of, and shall review, such taxation, and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by a taxing master of the Chancery Division of the High Court, the registrar whose taxation is to be reviewed shall forward to the said taxing master the bill which is required to be reviewed.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing master shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) There shall be allowed to the person whose bill is reviewed such costs of and incidental to his appearance on the review as the taxing master of the High Court shall think proper, and such costs shall be paid to such person out of the assets of the company: Provided that the costs of the attendance of a principal shall not be allowed if in the opinion of the taxing master he could have been sufficiently represented by his London agent.

Costs payable out of the Assets of the Company.

31. The assets of a company which is being wound up, Costs payable out of the assets. remaining after payment of the fees and actual expenses incurred in realising or getting in the assets, shall, subject to

any order of the Court, and, if the winding-up is in the Stannaries Court, subject to the provisions of the Stannaries Act, 1887, be liable to the following payments, which shall be made in the following order of priority, namely:—

First. The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next. The remuneration of the special manager (if any).

„ The costs and expenses of any person who makes, or concurs in making, the company's statement of affairs.

„ The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the official receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company.

„ The liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for.

„ The costs of any person properly employed by the liquidator with the sanction of the committee of inspection.

„ The remuneration of the liquidator:

„ The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Official Receiver as Provisional Liquidator.

Appoint-
ment of
Provisional
Liquidator.

32. (1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of the official receiver as provisional liquidator, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment.

Form 21.

(2) An order appointing the official receiver to be provisional liquidator prior to the making of a winding-up order, shall bear the number of the petition in respect of which it is made, and shall state the nature and short description of the property of which the official receiver is ordered to take possession.

Petition.

33. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 12 and 13 in the Appendix, with such variations as circumstances may require. Form of petition. Forms 12 and 13.

34. Every petition shall be advertised seven clear days before the hearing, as follows:— Advertisement of petition.

(1) In the case of a company, whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the London Gazette, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs. Form 16.

(2) In the case of any other company, once in the London Gazette, and once at least in one local newspaper circulating in the district where such registered office, or principal or last known place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

35. Every petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding-up of a company, subject to the supervision of the Court, shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company. Service of petition. Forms 14 and 15.

36. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be Verification of petition. Form 17.

verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Copy of petition to be furnished to creditor or contributory.

37. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying the rate of 4*d.* per folio of seventy-two words for such copy.

Order to Wind up a Company.

Form and contents. Forms 18 and 19.

38. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out, or concur in making out, the company's statement of affairs as the official receiver may require, to attend on the official receiver forthwith on the service thereof at the place mentioned therein.

Transmission of copy to official receiver.

39. Three copies of every order to wind up a company, and order for the appointment of the official receiver as provisional liquidator of a company, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the registrar to the official receiver.

Service of order.

40. The official receiver shall cause a copy of the order to wind up the company, sealed with the seal of the Court, to be served upon the secretary or other chief officer of the company at the registered office of the company, or upon such other person or persons, or in such other manner, as the Court may direct.

Notice of order.

41. (1) When an order to wind up a company is made, the official receiver shall forthwith give notice thereof to the Board of Trade, who shall forthwith cause such notice to be gazetted.

Form 20.

(2) The official receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

Special Manager.

42. (1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager. No affidavit by the official receiver in support of such an application shall be required.

Appointment
of special
manager
[s. 5 of Act
of 1890].

(2) The remuneration of the special manager shall, unless the Judge otherwise in any special case directs, be stated in the order appointing him.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the official receiver.

First Meetings of Creditors and Contributories.

43. (1) The official receiver shall give to each of the directors, and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories, seven days' notice of the time and place appointed for each meeting. The notice may be either delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver.

Notice of
first meeting
to officers of
company
[s. 6 of Act
of 1890].
Form 24.

44. The official receiver shall fix the days for the first meeting of creditors and contributories, and shall forthwith give notice thereof to the Board of Trade, who shall gazette the same.

Notice of
first meet-
ing to Board
of Trade.

45. Where practicable, and unless the Court specially directs to the contrary, the first meetings of creditors and contributories shall not be held until after the statement of affairs prescribed by section 7 of the Companies (Winding-up) Act, 1890, has been submitted to the official receiver. If an extension of time for summoning the meetings or either of them is required, an application for extension of time may be made by the official receiver *ex parte* on a report without any affidavit.

Times for
holding first
meeting.

46. Notice of the first meeting of contributories shall be sent to every person who appears from the company's books or otherwise to be a contributory of the company.

Notice to con-
tributories.
Forms 22 and
23.

General Meetings of Creditors and Contributories.

Meetings for
ascertaining
wishes of
creditors and
contribu-
tories.

Form 31.
[s. 13 of Act
of 1890.]

Meetings
subsequent
to the first
meetings.
Form 30.

Notices of
general
meetings.
Form 26.

Proof of
notice.
Forms 27
and 28.

Costs of
calling
meeting.

47. Subject to the provisions of the Companies (Winding-up) Act, 1890, and to the control of this Court, the liquidator may from time to time, when he thinks expedient, summon, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up.

48. Meetings subsequent to the first meetings of creditors and contributories shall be summoned by sending notices to them. The notice to each creditor shall be sent to the address given in his proof, or if he has not proved, to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

49. The notices of general meetings to be issued to creditors and contributories by the official receiver or liquidator shall, where no special time is prescribed, be sent off not less than seven days before the day appointed for the meeting.

50. A certificate by the official receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

51. The costs of summoning a meeting of creditors at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The said costs shall be repaid out of the assets of the Company, if the creditors or contributories, as the case may be, shall by resolution so direct.

52. Where a meeting is summoned by the official receiver he

or some one nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories (other than meetings to which the schedule of the Companies (Winding-up) Act, 1890, applies) the chairman shall be such person as the meeting by resolution shall appoint.

Chairman of
general
meetings.
Form 25.

53. The provisions of section 91 of the Companies Act, 1862, relating to votes of creditors and contributories at meetings summoned under that section, shall apply to the voting of creditors and contributories at meetings held under the Companies (Winding-up) Act, 1890, and these Rules.

Votes at
meetings.

54. The official receiver, or, as the case may be, the liquidator, shall send in the High Court to the chief clerk of the Judge to whom the winding-up of the Company is assigned, and in any other Court to the registrar, a copy, certified by him, of every resolution of a meeting of creditors or contributories.

Copy of
resolution
for chief
clerk or
registrar.
Form 32.

55. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

Non-recep-
tion of notice
by a creditor.

56. Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified, or unless the Court otherwise orders.

Adjourn-
ment.
Form 29.

57. In calculating a quorum at a creditors' meeting, those persons only who are entitled to vote shall be reckoned.

Quorum.

Statement of Affairs.

58. (1) Every person who under section 7 of the Companies (Winding-up) Act, 1890, has been required by the official receiver to submit and verify a statement as to the affairs of the company, shall be furnished by the official receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The official receiver shall place upon the file of proceedings in the winding-up the verified statement of affairs.

Preparation
of statement
of affairs
[s. 7 of Act
of 1890].
Form 33.

(2) The official receiver may from time to time hold personal interviews with such person or persons, for the purpose of

investigating the company's affairs; and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint, and give the official receiver all information that he may require.

Extension of
time for sub-
mitting state-
ment of
affairs.

59. Where any person requires any extension of time for submitting the statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up, and shall render an application to the Court unnecessary.

Information
subsequent
to statement
of affairs.

60. After the statement of affairs of a company has been submitted to the official receiver it shall be the duty of each person who has made it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs.

Default.

61. Any default in complying with the requirements of section 7 of the Companies (Winding-up) Act, 1890, may be reported by the official receiver to the Court.

Expenses of
statement of
affairs.

62. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

Appointment of Liquidator.

Appointment
of liquidator
on report of
meetings of
creditors and
contribu-
tories.
Form 32.

63. (1) As soon as possible after the first meetings of creditors and contributories have been held, the official receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

Form 34.

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the creditors and contributories are unanimous in their determination, upon the application of the official receiver, forthwith make the appointments necessary for giving effect to such

determination. In any other case the Court shall on application by the official receiver, fix a day for considering the determinations of the meetings, deciding differences (if any), and making such appointments and orders as shall be necessary.

(3) When a time and place have been fixed for the consideration of the determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the day so fixed.

(4) Upon the consideration of the determinations of the meetings the Court shall hear the official receiver and any creditor or contributory.

(5) If a liquidator is appointed, a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company. Form 34.

64. Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the Court directs, immediately after the appointment has been made and the liquidator has given the required security. Advertisement of appointment.
Form 36.

65. In case of the death, removal, or resignation of a liquidator, another may be appointed in his place in the same manner as directed in the case of a first appointment, and the official receiver shall, on the request of not less than one-tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled. Death, &c., of liquidator.

66. When the official receiver is liquidator of a company he shall be styled "official receiver and liquidator." Style of official receiver when he is liquidator.

Security by Liquidator or Special Manager.

67. In the case of a special manager or a liquidator other than the official receiver, the following rules as to security shall be observed, namely:— Standing security to Board of Trade.
Form 35.

(1) The security shall be given to such officers or persons

and in such manner as the Board of Trade may from time to time direct.

- (2) It shall not be necessary that security shall be given in each separate winding-up; but security may be given, either specially in a particular winding-up, or generally to be available for any winding-up in which the person giving security may be appointed, either as liquidator or special manager.
- (3) The Board of Trade shall fix the amount and nature of such security, and may from time to time as they think fit, either increase or diminish the amount of special or general security which any person has given.
- (4) The certificate of the Board of Trade, that a liquidator or special manager has given security to their satisfaction, shall be placed on the file of proceedings.
- (5) The cost of furnishing the required security by a liquidator or special manager shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

Failure to
give or keep
up security.

68. (1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the Court, who shall thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security, the official receiver shall report such failure to the Court, who may thereupon remove the liquidator or special manager and make such order, as to costs as the Court shall think fit.

Public Examination.

Report of
official re-
ceiver to be
filed
[s. 8 of Act,
of 1890].

69. (1) A report made by the official receiver, pursuant to section 8 of the Companies (Winding-up) Act, 1890, shall state in a narrative form the facts and matters which the official receiver desires to bring to the notice of the Court, and his opinion, as required by section 8 of the Companies (Winding-up) Act, 1890.

Appointment
of time for
consideration
of report.

70. The official receiver may apply to the Court to fix a day for the consideration of the report, and on such application

the Court shall appoint a day on which the report shall be considered.

71. The consideration of the report shall be before the Judge of the Court personally in Chambers, and the official receiver shall, personally or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require. Consideration of report.

72. If the Court makes an order pursuant to sub-section nine of section eight of the Companies (Winding up) Act, 1890, directing any person to attend for public examination, the examination shall be held in open Court— Order for public examination. Form 37.

(a) If the winding-up of the company is in the High Court, before such one of the officers of the Court mentioned in section 8 of the Companies (Winding-up) Act, 1890, as the Court may direct, and in the absence of any such direction, before a registrar in bankruptcy of the High Court.

(b) If the winding-up of the company is in a County Court, before the Judge of the Court, or before a registrar of the Court if such registrar is also a district registrar of the High Court named by the Lord Chancellor for the purpose of holding public examinations under the Acts, or before any such district registrar.

(c) If the winding-up of the company is in the Stannaries Court, before the vice-warden.

73. Upon an order directing a person to attend for public examination being made, the official receiver shall apply for the appointment of a day on which the public examination is to be held. Application for day for holding examination.

74. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person who is to be examined, by sending such notice in a letter addressed to his usual or last known address. Appointment of time and place for public examination. Form 38.

75. The official receiver shall give notice of the order appointing the time and place for holding a public examination to the creditors and contributories by advertising the order in such newspapers as the Board of Trade from time to time Notice of public examination to creditors and contributories.

direct, or, in default of any such direction, as the official receiver thinks fit, and shall also forward notice of the order to the Board of Trade to be gazetted.

Default in attending.
Form 41.

76. If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed by the order for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond, with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the satisfaction of the Court that the order for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

Notes of examination to be filed.
Form 40.

77. The notes of every public examination held pursuant to the Companies (Winding-up) Act, 1890, shall, after being signed as required by the said Act, be filed with the proceedings.

Proceedings against Delinquent Directors, Promoters, and Officers.

Application against delinquent directors, officers, and promoters [s. 10 of Act of 1890].
Form 42.

78. An application under section 10 of the Companies (Winding-up) Act, 1890, shall in any Court other than the High Court be made by motion to the Court. In the High Court the application shall be made in accordance with the practice heretofore observed with reference to applications under section 165 of the Companies Act, 1862. Where the application is made by the official receiver or liquidator he may make a report to the Court stating any facts or information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the matter. Where the application is made by any other person it shall be supported by affidavit.

Notice of application.

79. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given, not less than four days before the hearing of the motion.

Payments into and out of a Bank.

80. All payments out of the Companies' Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

Payments out of Bank of England [s. 11 of Act of 1890].
Special bank account.

81. Where the Liquidator is authorised to have a special bank account he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

82. Where application is made to the Board of Trade to authorise the liquidator to make his payments into and out of a special bank account the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Application by committee of inspection and authority for special bank account.
Forms 43 and 44.

List of Contributors.

83. The liquidator shall with all convenient speed after his appointment settle a list of the contributories of the company, and shall appoint a day for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the liquidator shall observe the requirements of section 99 of the Companies Act, 1862.

Liquidator to settle list of contributories [s. 13 of Act of 1890; ss. 98 and 99 of Act of 1862].
Form 45.

84. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

Appointment of time and place for settlement of list.
Form 46.

85. On the day appointed for settlement of the list of contributories, the liquidator shall hear any person who objects

Settlement list of contributories.

Form 47.

to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

Notice to contributories.
Forms 48, 50, and 51.

86. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list or for a variation of the list, must be made to the Court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled in the list of contributories.

Application to the Court to vary the list
[s. 13 and s. 24 of Act of 1890].

87. Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list.

Variation of or addition to list of contributories.
Forms 49 and 52.

88. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Collection and Distribution of Assets.

Collection and distribution of company's assets by liquidator
[s. 13 of Act of 1890; s. 98 of Act of 1862].
Powers of liquidator
(s. 13 of Act of 1890).

89. The duties imposed on the Court by section 98 of the Companies Act, 1862, with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities, shall be discharged by the liquidator as an officer of the Court, subject to the control of the Court.

90. For the purpose of the discharge by the liquidator of the duties imposed by section 98 of the Companies Act, 1862, as varied by section 13 of the Companies (Winding-up) Act, 1890, and the last preceding Rule, the liquidator shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the Court

may, on his application, enforce such acquisition or retention accordingly.

91. The powers conferred on the Court by section 100 of the Companies Act, 1862, shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent or officer of a company which is being wound up under order of the Court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender, or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Power of liquidator to require delivery of property [s. 13 of Act of 1890; s. 100 of Act of 1862].
Form 53.

Calls.

92. The powers and duties of the Court in relation to making calls upon contributories, conferred by section 102 of the Companies Act, 1862, shall and may be exercised by the liquidator as an officer of the Court, subject to the provisions of section 13 of the Companies (Winding-up) Act, 1890, and to the following regulations:—

Calls by liquidator [s. 13 of Act of 1890; s. 102 of Act of 1862].
Form 54.

- (1) Where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Acts, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call.
- (2) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, and where the winding-up is not in the High Court, also in a newspaper circulating in the district of the Court in which the winding-up is being conducted. The advertisement

Form 55.

shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended call.

- (3) At the meeting of the committee of inspection any statements or representations, made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory, shall be considered before the intended call is sanctioned.
- (4) The sanction of the committee shall be given by resolution which shall be passed by a majority of the members present.
- (5) Where there is no committee of inspection the liquidator shall not make a call without obtaining the leave of the Court.

Form 56.

Application
to the Court
for leave
to make a
call.
Forms 58,
59, 60, and
61.

93. Every application to the Court for leave to make any call on the contributories, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Service of
notice of a
call.
Forms 57
and 62.

94. When, in pursuance of a resolution of the committee of inspection or an order of the Court, a call has been made by the liquidator, a copy of the resolution or order shall be forthwith served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

Enforcement
of call.
Forms 63,
64, and 65.

95. The payment of the amount due from each contributory on a call may be enforced by order of the Court to be made in Chambers on summons by the liquidator.

Proofs.

96. Every creditor shall prove his debt.

97. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a liquidator has been appointed, to the liquidator, an affidavit verifying the debt. Proof of debt [s. 107 of Act of 1862, and s. 13 of Act of 1890]. Mode of proof.

98. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge. Verification of proof.

99. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. Contents of proof. Form 66. The official receiver or liquidator may at any time call for the production of the vouchers.

100. The affidavit shall state whether the creditor is or is not a secured creditor. Statement of security.

101. A creditor shall bear the cost of proving his debt, unless the Court otherwise orders. Costs of proof.

102. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. Discount.

103. When any rent or other payment falls due at stated periods, and the order to wind up is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order, as if the rent or payment grew due from day to day. Periodical payments.

104. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the commencement of the winding-up from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment. Interest.

Proof for
debt payable
at a future
time.

105. A creditor may prove for a debt not payable when the winding-up order was made, as if it were payable immediately, subject to a rebate of interest at the rate of five per centum per annum, computed from the date of the winding-up to the time when the debt would have become payable according to the terms on which it was contracted.

Workmen's
wages.
Form 67.

106. In any case in which it appears from the statement of affairs that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production
of bills of
exchange
and promissory
notes.

107. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the official receiver, chairman of a meeting, or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Time for
lodging
proofs.

108. A proof intended to be used at the first meeting of creditors or at an adjournment thereof shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting.

Transmis-
sion of
proofs to
liquidator.

109. Where a liquidator is appointed all proofs of debts that have been received by official receiver shall be handed over to the liquidator. But the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

*Admission and Rejection of Proofs, and Appeal to
the Court.*

Examination
of proof.
Form 68.

110. The liquidator shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it

If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

111. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the liquidator rejecting a proof shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the rejection. Appeal by creditor.

112. If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount. Expunging at instance of liquidator.

113. The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter. Expunging at instance of creditor.

114. For the purpose of any of his duties in relation to proofs, the liquidator may administer oaths and take affidavits. Oaths.

115. The official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal. Official receiver's powers, &c.

116. The official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected. Filing proofs by official receiver.

117. Every liquidator other than the official receiver shall, on the first day of every month, file with the proceedings a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall place the proofs on the file of proceedings. Proofs to be filed.

118. The official receiver, or, as the case may be, the liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof, with a memorandum thereon of his disallowance thereof. Procedure where creditor appeals.

Time for
admission or
rejection of
proofs by
official
receiver.

119. Subject to the powers of the Court to extend the time, the official receiver as liquidator, not less than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject, wholly or in part, every proof lodged with him, or require further evidence in support of it.

Time for
admission or
rejection of
proofs by
liquidator.

120. Subject to the power of the Court to extend the time, the liquidator, other than the official receiver, within twenty-eight days after receiving a proof which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it : Provided that where the liquidator has given notice of his intention to declare a dividend, he shall, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already dealt with, and give notice of his decision rejecting a proof wholly or in part to the creditors affected thereby.

Costs of
appeals from
decisions as
to proofs.

121. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends.

Notice of
intended
dividend.
Forms 69,
70, and 72.

122. (1) Not more than two months before declaring a dividend, the liquidator shall give notice of his intention to do so to the Board of Trade, in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice or intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the

proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade, in order that the same may be gazetted; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Proxies.

123. (1) A proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting, or adjourned meeting, at which it is to be used. Time for lodging. Forms 73 and 74.

(2) No person shall be appointed a general or special proxy who is a minor. No minor to be proxy.

124. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct. Use of proxies by deputy official receiver.

125. The proxy of a creditor blind or incapable of writing may be accepted; if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence: Provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request Filling in where creditor blind or incapable.

of the creditor and in his presence before he attached his signature or mark.

Statements by Liquidator to the Registrar of Joint Stock Companies.

Conclusion of
liquidation
[Act of 1890
s. 15 (1)].
Form 75.

126. The winding-up of a company shall, for the purposes of section 15 of the Companies (Winding-up) Act, 1890, be deemed to be concluded—

- (a) In the case of companies wound up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of joint stock companies :
- (b) In the case of companies wound up voluntarily or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies' Liquidation Account at the Bank of England.

Information
by liqui-
dator as to
pending
liquidations
[Act of 1890,
s. 15].

127. (1) Where a winding-up of a company is not concluded within the year after its commencement, the statements which the liquidator is to send to the registrar of joint stock companies with respect to the proceedings in and position of the liquidation, shall be sent in duplicate at such intervals and in such form as the Board of Trade may from time to time by general order direct. In the absence of any such direction a statement shall be sent twice in each year, the first statement being sent at the expiration of thirty days from the termination of the first year during which the liquidation proceedings have been pending, and the succeeding statements being sent at intervals of half a year, until the winding-up of the company is concluded ; and each statement shall consist of a statement of account dated from the last statement of account sent in under this Rule, together with a copy of the entries in the record-book made since such date.

(2) Where the winding-up of a company has been commenced on or before the 1st day of January 1890, and has not been concluded before the 1st day of January 1891, the first statement which the liquidator shall send to the registrar of joint stock companies with respect to the proceedings and position of the liquidation shall be sent in duplicate within thirty days from the 1st January 1891, or within such extended period as the Board of Trade or the Court may in any particular case for special reasons sanction.

*Unclaimed Funds and Undistributed Assets in the hands of
the Liquidator.*

128. Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands, or under his control, representing unclaimed or undistributed assets of the company on the 1st January 1891, or subsequently, and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

129. (1) The Board of Trade may at any time order any such person to submit to them an account, verified by affidavit, of the sums received and paid by him as liquidator of the company, and may direct and enforce an audit of the account.

(2) For the purposes of section 15 of the Companies (Winding-up) Act, 1890, and these Rules, the Court (as hereinafter defined) shall have, and at the instance of the Board of Trade may exercise, all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modifications, apply to proceedings under section 15 of the Companies (Winding-up) Act, 1890.

130. Every application by the Board of Trade to the Court for the purpose of ascertaining and getting in money payable into the Bank of England, pursuant to section 15 of the Companies (Winding-up) Act, 1890, and these Rules, shall, if the winding-up is in the High Court or in the Stannaries Court,

Duty of liquidator to furnish information to Board of Trade.

Power of Board of Trade to call for verified accounts. Form 82.

Applications to the Court for enforcing account.

be made to and dealt with by the Division of the High Court which for the time being exercises the bankruptcy jurisdiction of the High Court; and if the winding-up is in a Palatine Court or a County Court, to that Court; and the practice which is observed in reference to applications by the Board of Trade under section 162 of the Bankruptcy Act, 1883, shall govern and be observed in every application by the Board of Trade under the said section 15 of the Companies (Winding-up) Act, 1890, and these Rules.

Mode of payment into Companies Liquidation Account [Act of 1890, s. 15].

131. Any liquidator whose duty it is, under section 15 of the Companies (Winding-up) Act, 1890, to pay into the Companies Liquidation Account at the Bank of England any money representing unclaimed or undistributed assets of the company, shall apply, in such manner as the Board of Trade may direct, to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

Application for payment out by person entitled.

132. An application by a person claiming to be entitled to any money paid into the Bank of England, in pursuance of section 15 of the Companies (Winding-up) Act, 1890, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled, and such further evidence as the Board of Trade may direct.

Transfer of funds to Companies Liquidation Account.

133. (1) For the purposes of sub-section 3 of section 15 of the Companies (Winding-up) Act, 1890, money at the credit of the account of the official liquidator of any company with the Bank of England shall be deemed to be money under the control of the official liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt, it shall be transferred to the Companies Liquidation Account, and the official liquidator and chief clerk of the Chancery Division of the High Court shall draw and sign such cheques or orders as may be necessary for the transfer of the money.

(2) Any application to the Board of Trade for payment out of moneys so transferred shall be signed by the liquidator and countersigned by the chief clerk of the Judge of the Chancery Division to whom the winding-up is assigned.

Investment of Funds.

134. (1) Where the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Board of Trade.

Investment of assets in securities, and realisation of securities.
Forms 83 and 84.

(2) Where the committee of inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested, they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade.

Accounts and Audit.

135. The committee of inspection shall, not less than once every three months, audit the liquidator's cash-book, and certify therein under their hands the day on which the said book was audited.

Audit of cash-book [Act of 1890 s. 20].
Form 76.

136. (1) Every liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash-book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, in such form as the Board of Trade may direct, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

Board of Trade audit of liquidator's accounts.

(2) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the liquidator shall be certified and verified by him.

Form 77.

137. (1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading and shall incorporate in the cash-book the total weekly amount of the receipts and payments on such trading account.

Liquidator carrying on business.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the

Forms 80 and 81.

liquidator shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Copy of
accounts to
be filed.

138. When the liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the proceedings in the winding-up.

Summary of
accounts.

139. (1) The liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

Affidavit of
no receipts.

140. Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board an affidavit of no receipts or payments.

Proceedings
on resigna-
tion, &c., of
liquidator.

141. Upon a liquidator resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the official receiver all the books, papers, documents, and accounts which he is by this Rule required to deliver on his release.

Expenses of
sales.

142. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer

or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

Books.

143. The official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "record-book," in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "record-book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection.

Record-Book
[sec. 21 Act of 1890].

144. (1) The official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "cash-book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of these Rules as to trading accounts) enter from day to day the receipts and payments made by him.

Cash book.

(2) The liquidator shall submit the record-book and cash-book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

Register and File of Proceedings.

145. A register shall be kept in the Chambers of the Judge of all proceedings held there in each matter, with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing, and no documents or proceedings are to be filed in the Chamber of the Judge unless the Court by any general or special orders otherwise directs.

Register of proceedings in Judges' Chambers
[see Gen. Order of 1862, R. 57; and O. LV., R. 73, of R. S. C., 1883].

146. (1) The file of proceedings shall be kept by the official receiver, and all orders, reports, exhibits, admissions,

File of proceedings.

memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any company, shall be placed on the file by the official receiver or the liquidator, as far as may be in continuous order. Every contributory of the company, and every creditor thereof whose proof or claim has been admitted, and every person who has been a director or officer of the company, shall be entitled, at all reasonable times, to inspect the file free of charge, and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding threepence per folio of seventy-two words; and the file shall be produced in Court or before the Judge, and otherwise as occasion may require.

Memorandum of advertisements. Form 87.

147. (1) Whenever the London Gazette contains any advertisement relating to any winding-up to which these Rules apply, the liquidator shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a local paper, the official receiver shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the official receiver by the person who inserts the advertisement.

(4) A memorandum under this Rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

Release of Liquidator.

Application for release [s. 22 of Act of 1890]. Forms 78 and 79.

148. A liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator.

Gazetting release.

149. Where the Board of Trade have granted to a liquidator his release, a notice of the order granting the release shall be gazetted. The liquidator shall provide the requisite

stamp fee for the Gazette, which he may charge against the company's assets.

Books to be kept and Returns made by Officers of Courts.

150. In the High Court the chief clerks of the Chancery Division, and in the district registries of the High Court at Liverpool and Manchester respectively the district registrars of the High Court, and in a Court other than the High Court the registrar or other officer of the Court whose duty it is to perform under direction of the Judge the duties which in the County Court are performed by the registrar, shall keep books according to the forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

Books to be kept by officers of Courts [s. 29 of Act of 1890]. Forms 88 and 89.

151. The officers of the Courts whose duty it is keep the books prescribed by these Rules shall make and transmit to the Board of Trade such information and returns as the Board of Trade may from time to time require.

Extracts to be sent to Board of Trade.

Gazetting.

152. All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or these Rules requiring publication in the London Gazette, shall be gazetted by the Board of Trade.

Gazetting notices. Form 86.

153. Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter, with the necessary amendments and alterations, in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

Re-gazetting.

Liquidators and Committees of Inspection.

154. (1) The remuneration of a liquidator shall, unless the Court shall otherwise order, be fixed by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised after deducting the sums (if any) paid to secured

Remuneration of liquidator.

creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If there is no committee of inspection the remuneration of the liquidator shall be in accordance with the scale of percentage payable for realisations and distributions by the official receiver as liquidator.

Limit of remuneration.

155. Except as provided by the Acts or these Rules, no liquidator shall be entitled to receive out of the estate any remuneration for services rendered to the company, except the remuneration to which under the Acts and Rules he is entitled as liquidator.

Dealings with assets.

156. Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this Rule, may be set aside by the Court on the application of the Board of Trade or any creditor or contributory, and the Court may make such order as to costs as the Court shall think fit.

Liquidator not to purchase from his employer or partner without Court's sanction.

157. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

Committee of inspection.

158. No member of a committee of inspection in a winding-up shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this Rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts.

Costs of obtaining sanction.

159. In any case in which the sanction of the Court is obtained under the two last preceding Rules, the cost of obtain-

ing such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

160. Where the sanction of the Court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall under any circumstances be allowed to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

Sanction of payments to members of committee of inspection.

161. (1) Where a liquidator is appointed by the Court, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator shall pay all fees, costs, and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

Discharge of costs, &c., before assets handed over to liquidator.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

Official Receivers and Board of Trade.

162. (1) Judicial notice shall be taken of the appointment of the official receivers appointed by the Board of Trade.

Appointment.

(2) When the Board of Trade appoints any officer to act as

deputy for or in the place of an official receiver, notice thereof shall be given by letter to the Court to which such official receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an official receiver.

Removal.

163. (1) Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the official receiver was attached.

Personal performance of duties.

164. The Board of Trade may, by general or special directions, determine what acts or duties of the official receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant official receivers.

165. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the Court, like the official receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver.

Power of officers of Board of Trade and official receivers' clerks in certain cases to act for official receivers. Duties where no assets.

166. In the absence of the official receiver any officer of the Board of Trade, duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may by leave of the Court act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

167. Where a company against whom a winding-up order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

Accounting by official receiver.

168. (1) Where a liquidator is appointed by the Court, the official receiver shall account to the liquidator.

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade,

who shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these Rules as to liquidators and their accounts shall not apply to the official receiver when he is liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

169. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the official receiver. Official receiver to act for Board of Trade where no committee of inspection.

170. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the Court from an act or decision of the official receiver, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made. Appeals from Board of Trade and official receiver.

171. (1) An application by the Board of Trade to the Court to examine on oath the liquidator or any other person, pursuant to section 25 of the Companies (Winding-up) Act, 1890, shall be made *ex parte*, and shall be supported by a report to the Court, filed with the proceedings, stating the circumstances in which the application is made. Applications under s. 25 (2) of Act of 1890.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade, and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

Special Manager.

172. Every special manager shall account to the official receiver, and such special manager's accounts shall be verified by affidavit, and when approved by the official receiver the total of the receipts and payment shall be added to the official receiver's accounts. Accounts. Form 85.

Attendance and Appearance of Parties, &c.

173. Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if Attendance at proceedings.

the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person ; and such person shall not be entitled to attend any further proceedings until he has paid the same.

Solicitor of
liquidator.

174. Where the attendance of the liquidator's solicitor is required on any proceeding in Court or Chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

Miscellaneous Matters.

Board of
Trade
orders, &c.

175. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or these Rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the Queen's printers, and purport to be issued under the authority of the Board of Trade.

Enlargement
or abridg-
ment of time.

176. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by these Rules or fixed by any order of the Court for doing any act or taking any proceeding.

Formal
defect not
to invalidate
proceedings.

177. (1) No proceeding under the Acts shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of a receiver, liquidator, or member of a committee of inspection, shall vitiate any act done by him in good faith.

Application
of existing
procedure.

178. In all proceedings in or before the Court, or any judge or officer thereof, or over which the Court has jurisdiction under the Acts and Rules, where no other provision is made by the Acts or these Rules, the practice, proceeding, and regulations shall, unless the Court otherwise in any special case directs, in the High Court and Stannaries Court be in accordance with the Rules of the Supreme Court and practice of the High Court,

and in a County Court and Palatine Court in accordance, as far as practicable, with the existing rules and practice of the Court in proceedings for the administration of assets by the Court.

179. The provisions of Rule 2 of the Rules of the Supreme Court, 1887, relating to petitions in the district registries of Liverpool and Manchester, shall apply to petitions presented in those registries under the Acts and these Rules.

Petitions in Liverpool and Manchester district registries. Rules under Order of 1862 and not to apply in compulsory windings-up after December 31.

180. The Rules contained in the General Order of the Court of Chancery of 1862 and the forms prescribed by such Rules, shall from and after the commencement of these Rules cease to have effect or apply in the winding-up of any company wound up under the order of the Court where the winding-up order is made after the 31st of December, 1890.

(Signed) HALSBURY, C.

I concur.

(Signed) M. HICKS BEACH,

President of the Board of Trade.

The 29th of November, 1890.

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APPENDIX.

FORMS.

No. 1.

General Title (High Court).

In the High Court of Justice 189 . [Here
state letter and number.]

Chancery Division,

Mr. Justice

In the matter of the Companies Act, 1862 to 1890,

and

In the matter of the (a) Company Limited.

(a) Insert
full name of
company.

No. 2.

General Title (County Court).

In the County Court of , holden at

In the matter of the Companies Acts, 1862 to 1890,

and

In the matter of the (a) Company Limited.

(a) Insert
full name of
company.

No. 3.

ORDER OF TRANSFER.

(Title.)

Upon the application of (a)
hearing

and upon (a) Name of
Applicant.
and upon reading (b) Court
it is ordered that from which
the transfer
is to be made.

the said proceedings be transferred from the (b)
to the (c)

Court
Court.
(c) Court to
which the
transfer is to
be made.

Dated this

day of

189 .

P

No. 4.

NOTICE OF TRANSFER OF PROCEEDINGS TO THE BOARD OF
TRADE AND OFFICIAL RECEIVER.

(Title.)

The proceedings in the winding-up of the above-named company have been, by order dated the 18 , transferred to this Court from the [High Court] or [the County Court of , holden at , or as the case may be] and have had the above letter and number allotted to them. The letter and number before transfer were . Dated this day of 189 .

No. 5.

APPOINTMENT OF SHORTHAND WRITER TO TAKE EXAMINATION.

(Title.)

Before

Upon the application of the Official Receiver the Court hereby appoints of in the county of . to take the examination of at his public examination this day, pursuant to Rule 16 of the Companies Winding-up Rules, 1890.

Dated this day of 189 .

No. 6. .

DECLARATION BY SHORTHAND WRITER.

(Title.)

Before

I, , of , in the county of , the shorthand writer appointed by this Court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put and given by the said in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this day of 189 .

[Declared before me at the time and place above mentioned.]

No. 7.

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND
WRITER IS APPOINTED.

(Title.)

Public examination of (a).

Before

this day of at the Court

189 .

(a) Mr.
an officer
[or as the case
may be] of
the above-
named Com-
pany.

The above-named , being sworn and examined at the time and place above mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 189 .

No. 8.

NOTES OF PUBLIC EXAMINATION WHERE SHORTHAND WRITER
IS NOT APPOINTED.

(Title.)

Public examination of (a).

Before

this day of at the Court

189 .

(a) Mr.
' an officer
[or as the case
may be] of
the above
named com-
pany.

The above-named , being sworn and examined at the time and place above-mentioned, upon his oath saith as follows :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 189 .

No. 9.

RETURN BY TAXING OFFICER.

(a) Name
of Court.

In the (a)
Return of Bills taxed during the year ending
day of . . . , 189 .

	The Companies Acts.			
	Number of Bills. taxed.	Gross amount of Bills.	Amount disallowed on Taxa- tion.	Net amount allowed.
Solicitors' bills . . .				
Accountants' bills . . .				
Auctioneers' bills . . .				
High Bailiffs' bills . . .				
Brokers' and other per- sons' bills				
Totals				

(Signed)

Date . . . 189 .

No. 10.

CERTIFICATE OF TAXATION.

(Title.)

I hereby certify that I have taxed the bill of costs [or charges] [or expenses] of Mr. C. D. [*here state capacity in which employed or engaged*] [*where necessary add "pursuant to an order of the Court dated the . . . day of . . . 189 "*], and have allowed the same at the sum of . . . pounds shillings and . . . pence [*where necessary add "which sum is to be paid to the said C. D. by as directed by the said order"*].

Dated this . . . day of . . . 189 .
Taxing Master [or Registrar].

£ . . . : . . . : . . .

No. 12.

PETITION.

189 . [*Here state letter and number.*]

(a) State name of Court, and in the High Court the Division and Judge.

In the (a)

In the matter of the Companies Acts, 1862 to 1890,
and

In the matter of the Company, Limited (b).

(b) [*or as the case may be.*]

- To (c)

The humble petition of (d) showeth as follows:—

(c) Insert title of Court.

(d) Insert full name, title, &c., of petitioner.

(e) State the full address of the registered office, so as sufficiently to show the district in which it is situate.

1. The Company, Limited (hereinafter called the company) was in the month of incorporated under the Companies Acts.

2. The registered office of the company is at (e)

3. The nominal capital of the company is £ divided into shares of £ each. The amount of the capital paid up or credited as paid up is £

4. The objects for which the company was established are as follows:—

To

and other objects set forth in the memorandum of association thereof.

[*Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows*]:—

Your petitioner therefore humbly prays as follows:—

(1) That the Company, Limited, may be wound up by the Court under the provisions of the Companies Acts, 1862 to 1890:

(2) Or that such other order may be made in the premises as shall be just.

NOTE.—(f) It is intended to serve this petition on

(f) This note will be unnecessary if the company is petitioner.

No. 13.

PETITION BY UNPAID CREDITOR ON SIMPLE CONTRACT.

(*Title as in No. 12.*)

Paragraphs 1, 2, 3, and 4 as in No. 12.

(a) State consideration for the debt, with particu-

5. The company is indebted to your petitioner in the sum of £ for (a)

6. Your petitioner has made application to the company for

payment of his debt, but the company has failed and neglected to pay the same or any part thereof. lars so as to establish that the debt claimed is due.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner therefore, &c. [as in No. 12].

No. 14.

AFFIDAVIT OF SERVICE OF PETITION ON MEMBERS, OFFICERS, OR SERVANTS.

(Title.)

In the matter of a petition dated

I, _____, of _____, make
oath and say :—

1. [*In the case of service of petition on a member, officer, or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.*]

That I did on _____ day, the _____ day of _____, 189____, serve [name and description] a member (or officer) (or servant) of the said company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said _____, at [office or place of business as aforesaid], before the hour of _____ in the _____ noon.

2. [*In the case of no member, officer, or servant of the company being found at the registered offices or place of business.*]

That I did on _____ day, the _____ day of _____, 189____, having failed to find any member, officer, or servant of the above-named company at [here state registered office or place of business], leave there a copy of the above-mentioned petition, duly sealed with the seal of the Court, before the hour of _____ in the _____ noon [add with whom such sealed copy was left, or where; e.g., affixed to door of offices, or placed in letter-box or otherwise.]

3. [*In the case of directions by the Court as to the member or members of the company to be served.*]

That I did on _____ day, the _____ day of _____, 189____, serve [name or names and description] with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said

, at [*place*] before the hour of in the
noon.

4. A sealed copy of the said petition is hereunto annexed.
Sworn at, &c.

No. 15.

AFFIDAVIT OF SERVICE OF PETITION ON LIQUIDATOR.

(*Title.*)

In the matter of a petition, dated , for
winding-up the above company under the supervision of the
Court.

I, , of , make oath and say:—

That I did on day, the day of , 189 ,
serve [*name and description*] the liquidator of the above-named
company with a copy of the above-mentioned petition, duly
sealed with the seal of the court, by delivering the same per-
sonally to the said , at [*place*] before the hour
of in the noon.

A sealed copy of the said petition is hereunto annexed.
Sworn at, &c.

No. 16.

ADVERTISEMENT OF PETITION.

In the matter of the Companies Acts, 1862 to 1890.
and

In the matter of the (a) Company.

(a) Insert
name of com-
pany.

(b) If the
winding-up is
to be subject
to supervision.
insert instead
of "by" the
words "subject
to the super-
vision."

Notice is hereby given, that a petition for the winding-up
of the above-named company by (b) the High Court of Justice
[or the County Court of] holden at
[or, as the case may be], was, on the day of ,
189 , presented to the said Court by the said company [or, by
A. B., of , a creditor [or contributory] of the said
company] [or, as the case may be.] And that the said petition
is directed to be heard before the Court sitting at

on the day of , 189 ; and
any creditor or contributory of the said company desirous to
oppose the making of an order for the winding-up of the said
company under the above Acts should appear at the time of

hearing by himself or (c) his counsel for that purpose ; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

(c) In the County Court add "his solicitor or."

C. and D., of, &c. [agents for E. and F., of &c.]

Solicitors for the petitioner.

No. 17.

AFFIDAVIT VERIFYING PETITION.

(Title.)

I, A. B., of, &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 18.

ORDER FOR WINDING-UP BY THE COURT.

day of , 189 .

(Title.)

Upon the petition of the above-named company [or A. B., of, &c., a creditor [or contributory] of the above-named company], on the day of , 189 , preferred unto the Court, and upon hearing for the petitioner, and for , and upon reading the said petition, an affidavit of (the said petitioner), filed, &c., verifying the said petition, an affidavit of L. M., filed the day of , 189 , the *London Gazette* of the day of , 189 , the newspaper of the day of [enter any other papers], each containing an advertisement of the said petition [enter any other evidence], this Court doth order that the said company be wound up by this Court under the provisions of the Companies Acts, 1862 to 1890, and that (a) , the official receiver attached to this Court, be constituted provisional liquidator of the affairs of the company.

(a) Name of official receiver.

NOTE.—A. B., being a of the company,

(b) Insert
the place at
which attend-
ance is
required.

is hereby required to attend at the office of the official receiver at (b)

The official receiver's offices are open every week-day from 10 A.M. to 4 P.M., except days, when they close at P.M.

No. 19.

ORDER FOR WINDING-UP SUBJECT TO SUPERVISION.

day, the day of 18 .

(Title.)

Upon the petition, &c., this Court doth order that the voluntary winding-up of the said company be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding-up may be adopted as the Judge shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the Judge at Chambers as there may be occasion.

No. 20.

NOTICE OF ORDER TO WIND UP [FOR LOCAL PAPER].

(a) Insert
full title of
company.

In the matter of the (a) company.

(b) Insert
name of Court
which made
the order.

Notice is hereby given, that by an order made by the (b) in the above matter, dated the day of 189 , on the petition of the above-named company [*or A. B., of*]. It was ordered that, &c. [*as in Order*].

Notice is also hereby given, that the first meeting of creditors will be held at , on the day of 189 , at o'clock, and the first meeting of contributories will be held at , on the day of 189 , at o'clock.

Dated this day of , 189 .

Official Receiver.

(c) State
address of
official
receiver's
office.

NOTE.—All debts due to the company should be paid to the official receiver at his office at (c) .

No. 21.

ORDER APPOINTING THE OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR AFTER PRESENTATION OF PETITION, AND BEFORE ORDER TO WIND UP.

the day of , 189 .

(Title.)

Upon the application, &c., and upon reading, &c., the Court doth hereby appoint Mr. , the official receiver attached to the Court, to be provisional liquidator of the above-named company. And the Court doth hereby limit and restrict the powers of the said official receiver as provisional liquidator to the following acts, that is to say [*describe the acts which the provisional liquidator is to be authorised to do and the property of which he is to take possession*].

No. 22.

NOTICE TO CREDITORS OF FIRST MEETING.

(Title.)

(Under the order for winding-up the above-named company, dated the day of , 189 .)

Notice is hereby given, that the first meeting of creditors in the above matter will be held at on the day of , 189 , at o'clock in the noon.

To entitle you to vote thereat, your proof must be lodged with me not later than o'clock on the day of , 189 .

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than o'clock on the day of , 189 .

Official Receiver.

Address.

(The statement of the company's affairs (a))

NOTE.

At the first meetings of the creditors and contributories they may amongst other things :—

(a) Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

No. 24.

NOTICE TO DIRECTORS AND OFFICERS OF COMPANY TO ATTEND
FIRST MEETING OF CREDITORS OR CONTRIBUTORIES.

(Title.)

Take notice that the first meeting of creditors [*or* contributories] will be held on the _____ day of _____ 189 , at _____ o'clock at (a) _____, and that you are required to attend thereat, and give such information as the meeting may require. (a) Here insert place where meeting will be held.

Dated this _____ day of _____ 189 .
To (b) _____ Official Receiver.

(b) Insert name of person required to attend.

No. 25.

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETING
AND USE PROXIES.

(Title.)

I, _____, the official receiver of _____ do hereby nominate Mr. _____ of _____ to be the chairman of the first meeting of creditors [*or* contributories] in the above matter, appointed to be held at _____ on the _____ day of _____ 189 , and I depute him, (a) _____ to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

Dated this _____ day of _____ 189 .
_____ Official Receiver.

(a) Here insert "Being a person in my employment or under my official control or being an officer of the Board of Trade."

No. 26.

NOTICE OF MEETING [GENERAL FORM].

(Title.)

Take notice that a meeting of creditors [*or* contributories] in the above matter will be held at _____ on the _____ day of _____, 189 , at _____ o'clock in the noon.

Agenda.

(a) [Here insert purpose for which meeting called.]

(b) "Liquidator" or "Official Receiver."

Dated this

(a)

day of 189 .

(Signed) (b)

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than o'clock on the day of , 189 .

No. 27.

AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING.

(Title.)

(a) State the description of the deponent.

I, , a (a) , make oath and say as follows :—

1. That I did on the day of 189 , send to each creditor mentioned in the company's statement of affairs [or to each contributory mentioned in the register of members of the company] a notice of the time and the place of the (b) in the form hereunto annexed marked "A."

(b) Insert here "general" or "ad-journed general" or "first" meeting of creditors [or contributories as the case may be].

2. That the notices for creditors were addressed to the said creditors respectively, according to their respective names and addresses appearing in the statement of affairs of the company.

3. That notices for the contributories were addressed to the contributories respectively according to their respective names and addresses appearing in the register of the company.

4. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock in the noon on the said day.

Sworn, &c.

No. 28.

CERTIFICATE OF POSTAGE OF NOTICES (GENERAL).

(Title.)

I,
a clerk in the office of the official receiver, hereby certify :—

1. That I did on the _____ day of _____
 189 , send to (a)
 a notice of the time and the place of the first meeting, or (b)
 in the form hereunto annexed
 marked "A."

Paragraphs 2, 3, and 4 as in No. 27.

Signature

Dated

(a) Each creditor mentioned in the statement of affairs, or each contributory mentioned in the Register of Members of the Company, or as the case may be.

(b) "A general meeting," or "adjourned general meeting," or as the case may be.

No. 29.

MEMORANDUM OF ADJOURNMENT OF FIRST OR OTHER MEETING.

(Title.)

Before _____ at _____ on the _____ day of _____
 189 , at _____ o'clock.

Memorandum.—The (a) meeting of (b)
 in the above matter was held at the time and place above
 mentioned; but it appearing that (c) the meeting
 was adjourned until the _____ day of _____ 189 , at
 o'clock in the _____ noon, then to be held at the same
 place.

(a) "First" or as the case may be.

(b) Insert "Creditors" or "contributories" as the case may be.

(c) Here state reason for adjournment.

Chairman.

No. 30.

MEMORANDUM OF PROCEEDINGS AT ADJOURNED FIRST MEETING (No quorum).

(Title.)

Before _____ at _____ on the _____ day of _____
 189 , at _____ o'clock.

Memorandum.—The adjourned meeting of (a)
 in the above matter was held at the time and place above-
 mentioned; but it appearing that there was not a quorum of
 (a) _____ qualified to vote present or repre-
 sented, no resolution was passed, and the meeting was not
 further adjourned.

(a) Insert "creditors" or "contributories" as the case may be.

Chairman.

No. 31.

(a) Or "contributories."

LIST OF CREDITORS (a) ASSEMBLED TO BE USED AT
EVERY MEETING.

(Title.)

Meeting held at this day of
189 .

(b) In case of contributories insert "number of shares."

Number.	Names of creditors (a) present or represented.	Amount of Proof.(b)		
1				
2				
3				
4				
5				
6				
7				
7	{ Total number of creditors } { (a) present or represented }			

No. 32.

REPORT OF RESULT OF MEETING OF CREDITORS OR
CONTRIBUTORIES.

In the matter, &c.

I, A.B., the official receiver of the Court [*or as the case may be*] chairman of a meeting of the creditors [*or contributories*] of the above-named company, summoned by advertisement [*or notice*] dated the day of , 189 , and held on the day of , 189 , at in the county of , do hereby report to the Court the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors whose proofs of debt against the said company were admitted for voting purposes, amounting

in the whole to the value of £ [or by
contributories, holding in the whole shares in the said
company, and entitled respectively by the regulations of the
company to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether
the creditors [or contributories] of the said company wished
that [*here state proposal submitted to the meeting.*]

The said meeting was of opinion that the said proposal
should [or should not] be adopted [or the result of the voting
upon such question was as follows :]—

The undermentioned creditors [or contributories] voted in
favour of the said proposal being adopted :

Name of Creditor [or Contributory].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

The undermentioned creditors [or contributories] voted
against the said proposal being adopted :—

Name of Creditor [or Contributory].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

Dated this

day of

189 .
(Signed) H.T.,
Chairman.

Q

No. 33.

STATEMENT OF AFFAIRS.

(Title)

STATEMENT OF AFFAIRS on the day of 189 , the date of the Winding-up Order.
I.—As regards Creditors.

Liabilities.		Liabilities.		Assets.		Estimated to produce.	
£	s. d.	£	s. d.	£	s. d.	£	s. d.
Debts and liabilities, viz.:		Expected to rank.		Property as per List "H," viz.:			
(a) Unsecured creditors, as per List "A"				(a) Cash at bankers			
(b) Creditors fully secured (not including debenture holders) as per List "B"				(b) Cash in hand			
Estimated value of securities				(c) Stock in Trade [estimated cost]			
Estimated surplus Carried to List "C"				(d) Machinery			
Balance to contra				(e) Trade fixtures, fittings, utensils, &c.			
(c) Creditors partly secured as per List "C"				(f) Investments in shares, &c.			
Less estimated value of securities				(g) Loans on mortgage			
Estimated to rank for dividend				(h) Other property, viz.			
				(i) Book debts, as per List "I," viz.:			
				Good			
				Doubtful			
				Bad			
				Estimated to produce			
				(c) Bills of exchange, or other similar securities on hand, as per List "J"			
				Estimated to produce			

	£	s.	d.
(d) Liabilities on bills discounted other than the company's own acceptances for value, as per List "D"			
Of which it is expected will rank for dividend			
(e) Other liabilities, as per List "E"			
Of which it is expected will rank against the assets for dividend			
(f) Loans on debenture bonds, as per List "F" deducted contra			
(g) Preferential creditors for rates, taxes, wages, &c. as per List "G" deducted contra			
Estimated surplus (if any) after meeting liabilities of company, subject to cost of liquidation			£
			£

The nominal amount of unpaid capital liable to be called up to meet the above deficiency is £

The nominal amount of unpaid capital liable to be called up to meet the above deficiency is £

LIST "F."
LIST OF DEBENTURE HOLDERS.

The Names to be arranged in Alphabetical Order and numbered consecutively. *Separate lists* must be furnished of holders of each Issue of Debentures should more than one Issue have been made.

No.	Name of Holder.	Address.	Amount.		Description of Assets over which Security extends.

Signature

Dated

189 .

PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES, AND WAGES.

[illegible]

Dated

189

LIST "H."

PROPERTY.

Full particulars of every description of property not included in any other list, are to be set forth in this list.

State particulars.

State particulars.

Full Statement and Nature of Property.		Estimated to produce.		
		£	s.	d.
(a)	Cash at bankers			
(b)	Cash in hand			
(c)	Stock in trade, at [estimated cost, £]			
(d)	Machinery, at			
(e)	Trade fixtures, fittings, office furniture, utensils, &c.			
(f)	Investments in stocks or shares			
(g)	Loans for which mortgage or other security held			
(h)	Other property, viz. :—			

Signature

Dated

189 .

LIST "J."

BILLS OF EXCHANGE, PROMISSORY NOTES, &c., ON HAND AVAILABLE AS ASSETS.

No.	Name of Acceptor of Bill or Note.	Address, &c.	Amount of Bill or Note.	Date when due.	Estimated to produce.	Particulars of any Property held as Security for Payment of Bill or Note.

Signature

Dated

189 .

LIST "K."
UNPAID CALLS.

[illegible]

Signature
Dated

189 .

“L.”

LIST OF FOUNDERS' SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.			Total Amount called up.		

Signature

Dated

189 .

"M."

LIST OF ORDINARY SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.

Signature

Dated

189 .

"N."

LIST OF PREFERENCE SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.

Signature

Dated

189 .

R

O.

Deficiency Account.

(1.) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE WITHIN THREE YEARS OF FORMATION OF COMPANY.

£	s.	d.	£	s.	d.
I. Gross profit (if any) arising from carrying on business from date of formation of Company, to date of Winding-up Order			I. Expenses of carrying on business from date of formation of Company to date of Winding-up Order, viz.:-		
II. Deficiency as per Statement of Affairs .			Salaries and Wages .	£	d.
			Rent, Rates, and Taxes .		
			Miscellaneous Trade Expenses .		
			Depreciations written off in Company's Book .		
			Interest on Loans .		
			II. Bad Debts (if any) as per List "I." (1) .		
			III. Director's Fees from date of formation of Company to date of Winding-up Order .		
			IV. Dividends paid (if any) from date of formation of Company to date of Winding-up Order .		
			V. Losses on Investments realised, from date of formation of Company to date of Winding-up Order, exclusive of depreciation written off as above, viz.:- (4) .		

VI. Depreciation on Property not written off in Company's Books, viz. :—(4) .																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													</
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NOTES.—(1) This List must show when debts were contracted.

- (1) This must show when debts were contracted.
- (2) Here add particulars of other losses or expenses (if any) and liabilities (if any) for which no consideration received.
- (3) These figures should agree.

(3) These figures should agree.

(4) Where particulars are numerous they should be inserted in a separate schedule.

Signature

Dated

O.—continued.

Deficiency Account.

(2.) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE MORE THAN THREE YEARS AFTER FORMATION OF COMPANY.

£	s.	d.	£	s.	d.
I. Excess of Assets over Liabilities on the (1) day of 18 (if any), as per Company's Balance Sheet			I. Excess of Capital and Liabilities over assets on the (1) day of 18, (if any) as per Company's Balance Sheet		
II. Gross profit (if any) arising from carrying on business from the (1) day of 18			II. Expenses of carrying on business from the (1) day of 18, viz.:—		
III. Deficiency as per Statement of Affairs			Salaries and Wages	£	d.
			Rent, Rates, and Taxes		
			Miscellaneous Trade Expenses		
			Depreciations written off in Company's Books		
			Interest on Loans		
			III. Bad Debts (if any) as per List "I" (2)		
			IV. Directors' Fees from the (1) day of 18		
			V. Dividends paid (if any) since the (1) day of 18		
			VI. Losses on Investments realised since the (1) day of 18, exclusive of depreciation written off as above, viz.:—(4)		

VII. Depreciation on property not written off in Company's Books, viz. :—(4)															
VIII. Other Losses and Expenses (if any) (3)															
" since the (1) day of 18, viz. :—															
IX. Unpaid Calls, as per List "K."															
Less Amount taken credit for in front sheet as estimated to be realised therefrom															
Balance estimated as irrecoverable															
Total amount to be accounted for															

NOTES.—(1) Three years before date of Winding-up Order.

(2) This List must show when debts were contracted.

(3) Here add particulars of other losses or expenses (if any) and liabilities (if any) for which no consideration received.

(4) Where particulars are numerous they should be inserted in a separate schedule.

(5) These figures should agree.

Signature

Dated

189 .

No. 34.

ORDER APPOINTING LIQUIDATOR.

(Title).

Upon the application of _____, the
 official receiver of the Court, and upon reading the report of
 the result of the meetings of creditors and contributories held
 respectively on the _____ day of _____ 189____, and on the
 _____ day of _____ 189____, and upon hearing, &c.
 it is hereby ordered that _____ of
 _____ be appointed liquidator of the above-named
 company.

[If a committee of inspection is also appointed, add

And it is further ordered that the following persons be
 appointed a committee of inspection to act with the
 liquidator.]

And it is ordered that the said liquidator do within
 _____ days from the date of this order give security to the satis-
 faction of the Board of Trade in the manner provided by the
 Companies (Winding-up) Rules, 1890.

Dated the _____ day of _____ 189____.

No. 35.

CERTIFICATE THAT LIQUIDATOR OR SPECIAL MANAGER HAS
GIVEN SECURITY.

(Title.)

This is to certify that A. B., of _____, who was on
 the _____ day of _____, 189____, appointed liquidator [*or*
 special manager] of the above-named company, has duly given
 security to the satisfaction of the Board of Trade.

Dated this _____ day of _____ 189____.

By the Board of Trade,
 (Signed) _____ J. S.

No. 36.

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR.

In the matter, &c.

By order of the _____, dated the _____ day of
 189____, Mr. _____ of _____ has been appointed

liquidator of the above-named company with [or without] a committee of inspection.

Dated this day of 189 .

No. 37.

ORDER DIRECTING A PUBLIC EXAMINATION.

(Title.)

Upon the application of the official receiver in the above matter, and upon reading the report of the official receiver made to the Court on the day of 189 , and [as the case may be] and it appearing , it is ordered that [state name of person] attend before the (a) judge or officer on a day to be named for the purpose and be publicly examined as to the promotion or formation of the company and before whom the examination is to be as to the conduct of the business of the company, and as to his conduct and dealings as director [or officer] of the company held [or as the case may be].

Dated the day of 189 .

No. 38.

ORDER APPOINTING A TIME FOR PUBLIC EXAMINATION.

(Title.)

Upon the application of the official receiver in the above matter, it is ordered that the public examination of who by the order of was directed to attend before to be publicly examined , be held at (a) on the day of 189 at o'clock in the (a) Insert the place for the examination.

And it is ordered that the above-named do attend at the place and time above-mentioned.

Dated this day of 189 .

NOTE.—Notice is hereby given that if you, the above-named fail, without reasonable excuse, to attend at the time and place aforesaid, you will be liable to be committed to prison without further notice.

of the said Court, and to the governor or keeper of the [*here insert the prison*].

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that by order of the Court, dated the day of 189 , and directed to (a) he was directed to attend personally at the (b) and be examined before (c)

(a) Name of person required to attend.

(b) Place of examination.

(c) Name or title of officer before whom examination is directed to be held.

, which order was afterwards, as hath been duly proved on oath, duly served upon the said (a) [*or, that there is probable reason to suspect and believe that the said (a)* , has absconded and gone abroad [*or quitted his place of residence, or*] is about to go abroad [*or quit his place of residence*] with a view of avoiding examination under the Companies (Winding-up) Act, 1890.

And whereas the said (a) did without good cause fail to attend on the said day of 189 , for the purpose of being examined, according to the requirements of the said order of this Court made on the day of 189 , directing him so to attend.

These are therefore to require you the said [*or high bailiff, bailiffs, and others*], to take the said (a)

and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said (a) and him safely to keep in the said prison until such time as this Court may order.

Dated this day of 189

No. 42.

SUMMONS FOR PERSONS TO ATTEND AT CHAMBERS TO BE EXAMINED.

(*Title.*)

A. B. of &c., and E. F. of &c., are hereby severally summoned to attend at (a), in the county of on the day of 18 , at of the clock in the noon, to be examined on the part of the official receiver [*or the liquidator*] for the purpose of proceedings directed by the Court to be taken in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*], and all other books, papers, deeds, writings, and other

(a) State place of examination.

No. 45.

LIST OF CONTRIBUTORIES TO BE MADE OUT BY LIQUIDATOR.

(Title.)

The following is a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each, so far as I have been able to make out or ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

SECOND PART.—CONTRIBUTORIES AS BEING REPRESENTATIVES OF, OR LIABLE TO, THE DEBTS OF OTHERS.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

No. 46.

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST
OF CONTRIBUTORIES.*(Title.)*

(a) Insert
place of ap-
pointment.

Take notice that I, _____, the liquidator of the
above-named company, have appointed the _____ day of
189 , at _____ of the clock in the _____ noon, at (a)
in the county of _____, to settle the list of the con-
tributories of the above-named company, made out by me,
pursuant to the Companies Acts, 1862 to 1890, and the Rules
thereunder, and that you are included in such list in the
character and for the number of shares [or extent of interest]
stated below; and if no sufficient cause is shown by you to
the contrary at the time and place aforesaid, the list will be
settled, including you therein.

Dated this _____ day of _____ 189 .

Liquidator.

To Mr. A. B. [and to Mr. C. D.,
his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

No. 47.

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF THE
LIST OF CONTRIBUTORIES.*(Title.)*

Pursuant to the Companies Acts, 1862 to 1890, and to the
Rules made thereunder, I, the undersigned, being the liquidator
of the above-named company, hereby certify that the result
of the settlement of the list of contributories of the above-
named company, so far as the said list has been settled, up to
the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [*or* extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said First and Second Schedules, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. Before settling the said list, I was satisfied by the affidavit of W. S. , clerk to , duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list informing him that he was included in each list in the character and for the number of shares [*or* extent of interest] stated therein, and of the day appointed for finally settling the said list.

The FIRST SCHEDULE above referred to.

FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [<i>or</i> extent of Interest].	Date when included in the List.

included in such list in the character and for the number of shares [*or* extent of interest] stated below.

Any application by you to vary said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at my office at (a) (a) State address.
on any day between the hours of and

Dated this day of 189 .

(Signed)

Liquidator.

To Mr.

[*or* to Mr.
his solicitor].

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Share [<i>or</i> extent of Interest].

No. 49.

SUPPLEMENTAL LIST OF CONTRIBUTORIES.

(*Title.*)

The following is a list of persons who, since making out the list of contributories herein, dated the day of 189 , I have ascertained are, or have been, holders of shares [*or* members of] the above-named company, and to the best of my judgment are contributories of the said company.

2. The said supplemental list contains the names of such persons, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each.

the county of _____, between the hours of
and _____ of the clock, in the _____ noon of the said
day of _____ 189 .

Sworn, &c.

No. 51.

THE SCHEDULE REFERRED TO IN FORM NO. 50.

A.*

This schedule marked A., was produced and shown to *W. S.*,
and is the same schedule as is referred to in his affidavit sworn
before me this _____ day of _____ 189 .

W. B. &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what Character Included.	6. Number of Shares [or extent of Interest.]

No. 52.

ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES.

(Title.)

Upon the application of *W. N.* to review or vary the list of contributories of the said company in respect of the inclusion of the said *W. N.* therein, and that his name may be excluded therefrom [*or, as the case may be*], and upon hearing, &c., and upon reading, &c., It is Ordered, That the name of the said *W. N.* be excluded from the said list of contributories, *or* may be included in the said list of contributories for shares [*or, as the case may be*] [*or the Court doth not think fit to make any order on the said application, except that the said*

W. N. do pay to the liquidator of the said company his costs of this application, to be taxed by _____ in case the parties differ].

No. 53.

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR
DELIVERY OF BOOKS, &c., TO LIQUIDATOR.

(Title.)

(a) Name of liquidator. Take notice that I, the undersigned (a) _____, have been appointed liquidator of the above-named company, and
(b) Name of person to whom notice is addressed that you, the under-mentioned (b) _____, are required within _____ days after service hereof, to pay to me [or deliver, convey, surrender, or transfer to or into my hands] as liquidator of the said company at my office, situate at (c) _____ &c., the sum of £ _____, being the amount of debt appearing to be due from you on your account with the said company [or any sum or balance, books, papers, estate, or effects], [or specifically describe the property] now being in your hands, and to which the said company is entitled [or otherwise as the case may be].

Dated this _____ day of _____ 189 .

(Signed)

Liquidator.

To (b)
(Address)

No. 54.

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF
MEETING FOR SANCTION TO PROPOSED CALL.

(Title.)

(a) To be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed. Take notice that a meeting of the committee of inspection of the above company will be held at _____ on the (a) _____ day of _____ 189 , at _____ o'clock in the _____ noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ _____ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this _____ day of _____ 189 .

(Signed)

Liquidator.

STATEMENT.

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges, and expenses of the winding-up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the company amount in value to the sum of £. There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amounts more than £.

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges, and expenses of the winding-up, I estimate that a sum of £ will be required in addition to the amount of the company's assets hereinbefore mentioned.

5. In order to provide the said sum of £ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of £ per share should be made.

(Annex tabular statement showing amounts of debts, costs, &c., and of assets.)

No. 55.

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION.

In the matter of, &c.

Notice is hereby given that the undersigned liquidator of the above-named company proposes that a call should be made on all the contributories of the said company [*or as the case may be*] of £ per share, and that he has summoned a meeting of the committee of inspection of the company to be held at , on the day of 189 , at o'clock in the noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting and be heard, or make any communication to the liquidator or the members of the committee of inspection in reference to the intended call.

A statement showing the necessity of the proposed call and

the purpose for which it is intended may be obtained on application to the liquidator at his office at (a).
 (a) Insert address. (Signed)

Dated this day of 189 Liquidator.

No. 56.

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL.

Resolved that a call of £ per share
 by made by the liquidator on all the contributories of the
 company [*or as the case may be*].
 (Signed)

Members of the Committee
 of Inspection.
 Dated this day of 189 .

No. 57.

NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION
 TO BE SENT TO CONTRIBUTORY.

In the matter, &c.

Take notice that the committee of inspection in the winding
 up of this company have sanctioned a call of £
 per share on all the contributories of the company.

The amount due from you in respect of the call is the sum
 of £ . This sum should be paid by you direct
 (a) State address. to me at my office (a) on or before the
 day of 189 .
 Dated this day of 189 .

Liquidator.

To Mr.

No. 58.

SUMMONS FOR INTENDED CALL.

(Title.)

Let all parties concerned attend at my chambers in the
 on day, the
 day of 189 , at of the clock in the
 noon on the hearing of an application on the part of the
 liquidator of the above-named company, that a call to the

amount per share on all the contributories [*or, if upon any particular class, specify the same*] of the said company may be sanctioned.

This summons was taken out by A. and B., of ,
in the county of , solicitors for the liquidator.

To Mr. A. B., of, &c., a contributory of the }
said company proposed to be included }
in the said call. }

No. 59.

AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL
FOR CALL.

(Title.)

I, , of, &c., the liquidator of the above-named company, make oath and say as follows:—

1. I have in the schedule now produced and shown to me, and marked with the letter A., set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. persons have been settled by me on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said company mentioned in the said schedule A. and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realising the amount required as before mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 60.

ADVERTISEMENT OF INTENDED CALL.

In the matter of
 (a) Name of Court. Notice is hereby given that the (a) Court has appointed the day of 189 , at o'clock in the noon, at (b) , to sanction a call on all the contributories of the said company [*or as the case may be*], and that the liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 189 .

G. H.,

Liquidator.

No. 61.

ORDER SANCTIONING A CALL.

The day of , 189 .

(Title.)

Upon the application of the liquidator of the above-named company, and upon reading the affidavit of the said liquidator, filed 189 , and the exhibit marked A. therein referred to, and an affidavit of , filed 189 , it is ordered that leave be given to the liquidator to make a call of £ per share on all the contributories of the said company [*or as the case may be*]. And it is ordered that each such contributory do, on or before the day of 189 , pay to the liquidator of the company the amount which will be due from him or her in respect of such call.

No. 62.

NOTICE TO BE SERVED WITH THE ORDER SANCTIONING A CALL.

In the matter, &c.

The amount due from you, *A. B.*, in respect of the call made pursuant to leave given by the above [*or within*] order is the sum of £ , which sum is to be paid by you to me as the liquidator of the said company at my office, No. Street, in the county of

Dated this day of 189 .
To Mr. *A. B.*

G. H.,
Liquidator.

No. 63.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR
PAYMENT OF CALL DUE FROM CONTRIBUTORIES.

(*Title.*)

I, of, &c., the liquidator of the above-named company, make oath and say as follows:—

1. None of the contributories of the said company, whose names are set forth in the schedule hereunto annexed, marked *A*, have paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of £ per share, duly made under the Companies Acts, 1862 to 1890, dated the day of , 189 .

2. The amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively under the said call.

Sworn, &c.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.

Note.—In addition to the above affidavit, an affidavit of the service of the application for the call will be required.

No. 64.

ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY.

The day of , 189 .

(Title.)

Upon the application of the liquidator of the above-named company, and upon reading an affidavit of , filed the day of , 189 , and an affidavit of the liquidator, filed the day of , 189 , it is ordered, that *C. D.*, of, &c. [*or E. F.*, of, &c., the legal personal representative of *L. M.*, late of, &c., deceased], one of the contributories of the said company [*or, if against several contributories*, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do, on or before the day of , 189 , or within four days after service of this order, pay to the liquidator of the said company at his office, No. Street, in the county of , the sum of £ , [*if against a legal personal representative add*, out of the assets of *L. M.*, deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration, if the said *E. F.*, has in his hands so much to be administered, *or, if against several contributories*, the several sums of money set opposite to the respective names in the

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.

"If you, the under-mentioned A. B., neglect to obey this order by the time mentioned therein you will be liable to process of execution."

AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL.

I, *J. B.*, of, &c., make oath and say as follows:—

2. There was indorsed on the said copy when so served the following words, that is to say, " If you, the under-mentioned *G. F.* neglect to obey this order by the time mentioned therein, you will be liable to process of execution.

Sworn, &c."

No. 66.

PROOF OF DEBT. GENERAL FORM.

(Title.)

You should attend carefully to these directions.

(a) Fill in full name, address, and occupation of deponent I (a) of _____ in the county of _____, make oath and say :

(b) That I am in [the employ of the under-mentioned creditor ; and that I am duly authorised by _____ to make this affidavit, and that it is within my own knowledge that the debt hereinafter deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(c) That I am duly authorised, under the seal of the company hereinafter named, to make the proof of debt on its behalf.

1. That the above-named company was, at the date of the commencement of the winding-up of the affairs of the company, viz., the _____ day of _____, 189____, and still is _____

(d) Insert me and to C. D. and E. F., my co-partners in trade, if any, or, if by clerk, insert name, address, and description of principal. justly and truly indebted to (d) _____ in the sum of _____ pounds _____ shillings and _____ pence for (e) _____ as shown by the account endorsed hereon, or by the following account, viz :—

NOTE THIS.

(e) State consideration (as—
Goods sold and

for which sum or any part thereof I say that I have not nor
hath (f) or any person by (g)

order to my knowledge or belief for (g)
use had or received any manner of satisfaction or security
whatsoever, save and except the following (h)

Admitted to
vote for

£ : :
the day
of 189

Official Receiver
or Liquidator.

Admitted to
rank for dividend
for

£ : :
this day
of 189

Official Receiver.
or Liquidator.

Date.	Drawer.	Acceptor.	Amount.	Due Date.

Sworn at

in the county of

this day of

189 ,

Before me

Deponent's
signature.

delivered by
me [and my
said partner]
to the company
between the
dates of [or,
moneys ad-
vanced by me
in respect of
the under-
mentioned bill
of exchange,
or as the case
may be.]

(f) My said
partners or any
of them or the
above-named
creditor (as the
case may be.)

(g) My or
our or their or
his (as the case
may be.)

(h) [Here
state the partic-
ulars of all
securities held,
and where the
securities are
on the property
of the com-
pany assess
value of the
same, and if
any bills or
other negoti-
able securities
be held specify
them in the
schedule.]

The proof cannot be admitted for voting at the first meeting
unless it is properly completed and lodged with the official
receiver before the time named in the notice convening such
meeting.

No. 67.

PROOF OF DEBT OF WORKMEN.

(Title.)

I (a)
(b) of
make oath and say:—

1. That the above-named company was on the
day of , 189 , and still is, justly and truly indebted
to the several persons whose names, addresses, and descrip-
tions appear in the schedule endorsed hereon in sums severally
set against their names in the sixth column of such schedule

(a) Fill in
full name,
address, and
occupation of
deponent.

(b) On behalf
of the workmen
and others em-
ployed by the
above-named
company.

for wages due to them respectively as workmen or others in the employ of the company in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at
in the county of
this day of
189 .
Before me

Deponent's Signature,

SCHEDULE referred to on the other side.

1. No.	2. Full Name of Workman.	3. Address.	4. Description.	5. Period over which Wages due.	6. Amount due.

Signature of Deponent, _____

No. 68.

NOTICE OF REJECTION OF PROOF OF DEBT.

(Title.)

Take notice, that as official receiver of the above-named company, I have this day rejected your claim against the company (a) to the extent of £_____ on the following grounds:—

(a) If proof wholly rejected strike out words underlined.

And further take notice, that subject to the power of the Court to extend the time, no application to reverse or vary

my decision in rejecting your proof will be entertained after the expiration of (b) days from this date.

Dated this day of , 189 .

Signature,

Address,

To

(b) 21 days
or 7 days as
the case may
be. See Rules
111 and 112.

Official Receiver.

No. 69.

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND.

(Title.)

A (a) dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt. (a) Insert here "first" or "second," or "final," or as the case may be.

If you do not prove your debt by the day of , 189 , you will be excluded from this dividend.

Dated this day of , 189 .

G. H., Liquidator.

To X. Y.

[Address.]

No. 70.

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND.

(Title.)

Take notice, that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of , 189 , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of , 189

G. H., Liquidator.

To X. Y.

[Address.]

No. 71

STATEMENT TO ACCOMPANY NOTICE OF APPLICATION FOR RELEASE.

(Title.)

Statement showing Position of Company at Date of Application for Release.

Dr.

Cr.

Estimated to produce per com- pany's statement.	Receipts.		Payments.
	£	s. d.	£ s. d.
To total receipts from date of Winding-up Order, viz. :— (State particulars under the several headings speci- fied in the Statement of Affairs.) Receipts per trading ac- count Other receipts Total			By Board of Trade and Court fees
			Law costs of petition
			Other law costs
			Liquidator's remuneration, viz. :—
Less : Payments to redeem securities Costs of execution Payments per trading account			per cent. on £ assets realised
			per cent. on £ assets distributed in dividend
			Special managers' charges
			Person appointed to assist in preparation of Statement of Affairs
			Auctioneers' charges as taxed

Other taxed costs	£				
Costs of possession	£				
Costs of notices in Gazette and local papers	£				
Incidental outlay	£				
Total costs of realisation	£				
<i>Creditors, viz :—</i>					
(a.) Preferential					
(a.) Unsecured: dividend of s. d. in the £ on £					
The estimate of amount expected to rank for dividend was £					
Amount returned to contributors					
Balance					£

Assets not yet realised including calls estimated to produce £
(Add here any special remarks the liquidator thinks desirable.)
Creditors can obtain any further information by inquiry at the office of the liquidator.

Dated this _____ day of _____ 189 .

(Signature of Liquidator)
(Address)

APPENDIX II.

No. 72.

NOTICE OF DIVIDEND.

(Title.)

[Please bring this Dividend Notice with you.]

Dividend of _____ in the £.

[Address.]

Date

189 .

Notice is hereby given, that a _____ dividend of _____
 in the pound has been declared in this matter, and
 that the same may be received at _____ office, as above, on
 _____, the _____ day of _____, 189 , or on any
 subsequent _____ between the hours of _____.

Upon applying for payment, this notice must be produced
 entire, together with any bills of exchange or other securities
 held by you; and if you do not attend personally, you must
 fill up and sign the subjoined forms of *Receipt and Authority*,
 when a cheque payable to your order will be delivered to the
 bearer.

To

(Signed), G. H., Liquidator.

RECEIPT.

189 .

Received of _____ the sum of _____
 pounds _____ shillings and _____ pence, being the amount
 payable to _____ in respect of the _____ dividend of _____
 in the £ on _____ claim against this estate.

Signature.

£ : :

AUTHORITY.

Sir,

Please deliver to _____ the (a) If a firm, write "we" instead of "I" and set out the full name of the firm.

(Insert the name of the person who is to receive the cheque, or the words "me by post," if you wish the cheque sent to you in that way.)

cheque for the dividend payable to matter.

in this (b) Here insert either "Mr.

Creditor's Signature.

To

No. 73.

GENERAL PROXY.

(Title.)

I (a) of _____, a creditor [or contributory] hereby appoint (b) _____ to be (c) _____ general proxy in the above matter [excepting as to the receipt of dividend] (d)

Dated this _____ day of _____, 189 .

[Signed] (e)

Signature of Witness.

Address.

NOTES.

1. When the person desires that his general proxy should receive dividends he should strike out the words, "excepting as to the receipt of dividend," putting his initials thereto (f).

2. The authorised agent of a corporation may fill up blanks, and sign for the corporation, thus:—

For the _____ Company,
J. S. (duly authorised under the seal of the company).

3. A proxy may be filled up and signed by any person having a general authority in writing to sign. Such person shall sign—

J. S. [duly authorised by a general authority in writing to sign on behalf of (name of creditor)] (g).

of a clerk, manager, &c. in my regular employ," or "the official receiver in the above matter." The standing of the person appointed must be clearly set out.

(c) "My" or "our."

(d) See footnote 1.

(e) If a firm, sign the firm's trading title, and add "by A.B., a partner in the said firm."

As to signature by agent, see footnotes 2 and 3.

(f) It is not intended that the official receiver shall in any case receive dividends on behalf of a creditor.

(g) The official receiver or liquidator may require the authority to sign to be produced for his inspection.

*Certificate to be signed by person other than Creditor or
Contributory filling up the above Proxy.*

I, _____ of _____, being a (*here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court*), hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named _____ and in his presence, before he attached his signature [*or mark*] thereto.

Dated this _____ day of _____, 189 .

Signature _____.

The proxy must be lodged with the official receiver or liquidator not later than the day before the meeting at which it is to be used.

No. 74.

SPECIAL PROXY.

(*Title.*)

(a) If a firm, write "we" instead of "I" and set out the full name of the firm. I, (a) _____ of _____, a creditor [*or contributory*], hereby appoint (b) _____ as (c) _____ proxy at the meeting of creditors [*or contributories*] to be held on the _____ day of _____ 189 , or at any adjournment thereof, to vote (d) _____.

(b) Here insert either "Mr" or "the official receiver in the above matter." Dated this _____ day of _____ 189 .

(c) "My" or "our." [Signed] (e) _____

(d) Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution. Signature of Witness.

(e) If a firm, sign the firm's trading title and add "by" Address.

NOTES.

1. A creditor or contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

- (a) For or against the appointment or continuance in office of any specified person as liquidator or as member of the committee of inspection ;
- (b) On all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

2. The authorised agent of a corporation may fill up blanks and sign for the corporation, thus :—

“ For the

Company,

J. S. (duly authorised under the seal of the company). ”

A.B., partner
in the said
firm.”

As to
signature by
agent, see foot-
notes 1 and 2.

3. A proxy given by a creditor or contributory may be filled up and signed by any person having a general authority in writing to sign for such creditor or contributory. Such person shall sign—

J. S. [duly authorised by a general authority in writing to sign on behalf of (*name*)] (*f*).

(*f*) The
official re-
ceiver or
liquidator may
require the
authority to
sign to be pro-
duced for his
inspection.

*Certificate to be signed by person other than Creditor or
Contributory filling up the above Proxy.*

I, _____, of _____, being a (*here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court*), hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named _____ and in his presence before he attached his signature (*or mark*) thereto.

Dated this _____ day of _____ 189 .

Signature _____.

The proxy must be lodged with the official receiver or liquidator not later than the day before the meeting at which it is to be used.

No. 76.

(Title.)

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO AUDIT OF
LIQUIDATOR'S ACCOUNTS.

We, the undersigned, members of the committee of inspection in the winding-up of the above-named company, hereby certify that we have examined the foregoing account with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true, and complete account of the liquidator's receipts and payments.

Dated this day of 189 .

A. B.	}	Committee of Inspection.
C. D.		
E. F.		

No. 77.

AFFIDAVIT VERIFYING LIQUIDATOR'S ACCOUNT.

(Title.)

I, G. H., of , the liquidator of the above-named company, make oath and say :

That **the account thereunto annexed marked B contains a full and true account of my receipts and payments in the winding-up of the above-named company* from the day of 189 to the day of 189 inclusive, **and that I have not, nor has any other person by my order or for my use during such period, received any moneys on account of the said company* other than and except the items mentioned and specified in the said account.*

Sworn at, &c. }

* NOTE.—If no receipts or payments, strike out the words in italics.

No. 78.

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO
APPLY FOR RELEASE.

(Title.)

Take notice that I, the undersigned liquidator of the above-named company, intend to apply to the Board of Trade for my

release, and further take notice that any objection you may have to the granting of my release must be notified to the Board of Trade within twenty-one days of the date hereof.

A summary of my receipts and payments as liquidator is hereto annexed.

Dated this day of 189 .
G. H., Liquidator.

To K. L.

NOTE.—Section 22 (3) of the Companies (Winding-up) Act, 1890, enacts that "An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact."

No. 79.

APPLICATION BY LIQUIDATOR TO BOARD OF TRADE FOR
RELEASE.

(Title.)

I, G. H., the liquidator of the above-named company, do hereby report to the Board of Trade, as follows :—

1. That the whole of the property of the company has been realised for the benefit of the creditors and contributories [and a dividend to the amount of shillings in the pound has been paid as shown by the statement hereunto annexed, and a return of in the pound has been made to the contributories of the company] ;

[or That so much of the property of the company as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed in writing under our hands, be realised without needlessly protracting the liquidation, has been realised, as shown by the statement hereunto annexed, and a dividend to the amount of shillings has been paid] ; (a)

2. I therefore request the Board of Trade to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this day of 189 .
G. H., Liquidator.

(a) Add if necessary, "That the rights of the contributories between themselves have been adjusted."

No. 80.

LIQUIDATOR'S TRADING ACCOUNT.

(Title.)

G. H., the liquidator of the above-named company in account with the estate.

RECEIPTS.

PAYMENTS.

*Dr.**Cr.*

<i>Date.</i>					<i>Date.</i>				

Liquidator.

(Date.)

We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper.

Dated this day of 189 .

Committee of Inspection

[or member of the Committee of Inspection].

No. 81.

AFFIDAVIT VERIFYING LIQUIDATOR'S TRADING ACCOUNT.

(Title.)

I, the liquidator of the above-named company, make oath and say that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

Sworn, &c.

Liquidator.

No. 82.

AFFIDAVIT VERIFYING ACCOUNT OF UNCLAIMED AND
UNDISTRIBUTED FUNDS.*(Title.)*

I, _____ of _____ make oath and say that the particulars entered in the statement hereunto annexed, marked A, are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed dividends and undistributed funds is £ _____

Signature.

Sworn, &c.

No. 83.

REQUEST BY COMMITTEE OF INSPECTION TO BOARD OF TRADE
TO SELL SECURITIES.*(Title.)*

We, the committee of inspection in the above matter, hereby certify that a sum of £ _____, forming part of the assets of the above-named company, has been invested in Government securities, and that the sum of £ _____ is now required to answer demands in respect of the said company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands may be realised by the Board of Trade, and that the amount realised may be placed to the credit of the said company.

Dated this _____ day of _____ 189 .

_____ } Committee of Inspection.

No. 84.

CERTIFICATE AND REQUEST BY COMMITTEE OF INSPECTION AS
TO INVESTMENT OF FUNDS.*(Title.)*

We, the committee of inspection in the above matter, hereby certify that in our opinion the cash balance standing

Dated this day of 189 .

_____) Committee of Inspection.

AFFIDAVIT BY SPECIAL MANAGER VERIFYING ACCOUNT.

I, _____ of _____, make oath and say as follows:—

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

Sworn, &c.

No. 86.

NOTICES FOR LONDON GAZETTE.

(1) *Winding-up Orders.*

Name of Company.	Address of Registered Office.	Descrip- tion.	Court.	Number of Matter.	Date of Order.	Date of Petition.

(2) *First Meetings.*

Name of Company.	Address of Registered Office.	Descrip- tion.	Court.	Number.	Date of First Meeting.	Hour.	Place.

(3) *Notice of Day appointed for proceeding with Public Examinations.*

Name of Company.	Address of Registered Office.	Description.	Court.	Number of Matter.	Date fixed for proceeding with Examination.	Hour.	Place.

(4) *Notice of Intended Dividend.*

Name of Company.	Address of Registered Office.	Description.	Court.	Number.	Last Day for receiving Proofs.	Name of Liquidator	Address.

(5) *Notice of Dividend.*

Name of Company.	Address of Registered Office.	Description.	Court.	Number.	Amount per £.	First or final or otherwise.	When Payable.	Where Payable.

(6) *Appointments of Liquidators.*

Name of Company.	Court.	Number.	Liquidator's Name.	Address.	Date of Appointment.

(7) *Notice of Releases of Liquidators.*

Name of Company.	Court.	No. of Matter.	Liquidator's Name.	Liquidator's Address.	Date of Release.

No. 87.

MEMORANDUM OF ADVERTISEMENT OR GAZETTING.

(Title.)

Name of Paper.	Date of Issue.	Date of Filing.	Nature of Order, &c.

(Signed) A. B.

No. 88.

REGISTER OF WINDING-UP ORDERS TO BE KEPT IN THE COURTS.

Number of Winding-up Order.	Number of Petition.	Date of Petition.	Date of Winding-up Order.	Dates of Public Examinations (if any).	Liquidator.

No. 89.

REGISTER OF PETITIONS TO BE KEPT IN THE COURTS.

No. of Petition.	Name of Company.	Address of Registered Office.	Descrip- tion of Company.	Date of Petition.	Petitioner.	Date of Winding- up Order.

APPENDIX III.

SCALE OF FEES.

TABLE A.

	£	s.	d.
Every petition	1	0	0
Every bond with sureties	0	10	0
Every subpoena or summons	0	3	0
Every order made in Court	1	0	0
Every order made in Chambers	0	5	0
Every affidavit filed other than proof of debts	0	2	0
For taking an affidavit or an affirmation, or attestation, upon honour in lieu of an affidavit or a declaration, except for proof of debts, and except declaration by a shorthand writer under Rule 16 (Form 6) for each person making the same	0	1	6
And in addition thereto for each exhibit referred to therein and required to be marked	0	1	0
On every proof of debt above £2 (other than proof for workman's wages under Rule 106)	0	1	0
Every application for search other than by petitioner, liquidator, or officer of the company	0	1	0
Every office copy, each folio of 72 words	0	0	4
Every application to inspect liquidator's statement lodged with Registrar of Joint Stock Companies under section 15 of the Act	0	2	6
Every copy of or extract from such statement, each folio of 72 words or figures	0	0	4
Every application by a committee of inspection to the Board of Trade for a special bank account	1	0	0
Every order of the Board of Trade for a special bank account	2	0	0

Every application by a liquidator to an Official Receiver acting as Committee of Inspection	£	s.
Every application under section 15 of the Act to the Board of Trade for payment of money out of the Companies Liquidation Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account	0	10 0
	0	2 6

On one copy of the cash book showing assets realised, forwarded by the Official Receiver or liquidator to the Board of Trade, a fee according to the following scale on the gross amount of the assets realised and brought to credit, viz.:—£1 on every £100 or fraction of £100 up to £5000, and 10s. on every £100 or fraction of £100 above that amount.

For taxation of costs.—The same fees as those directed to be paid and collected by the order for the time being as to Supreme Court fees.

TABLE B.

I.—Where the Official Receiver acts as provisional liquidator only.

- (a) If the petition is withdrawn or dismissed:—

Such amount as the Court may consider reasonable to be paid by the petitioner (in addition to the fee payable on the petition) in respect of the services of the Official Receiver as provisional liquidator.

- (b) Where a winding-up order is made but the Official Receiver is not continued as liquidator:—

- (1) In respect of every 10 members, creditors and debtors, and every fraction of 10 . . . 0 10 0

Provided that where the net assets of the company are estimated not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to cover cost of official sta-

£ s. d.

tionery, printing, books, forms, and post-
ages.)

- (2) On the value of the company's property, as estimated in the statement of affairs :

On the first £5000, or fraction thereof	1 per cent.
On the next £20,000 " "	$\frac{1}{2}$ "
On the next £75,000 " "	$\frac{1}{4}$ "
On all above 	$\frac{1}{8}$ "

II.—Where the Official Receiver is continued as liquidator of the company (including his services as provisional liquidator).

- (1) In respect of every 10 members, creditors and debtors, and every fraction of 10 . I 0 0

Provided that where the net assets of the company are estimated not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to cover cost of official stationery, printing, books, forms, and post-ages.)

- (2) Upon the total assets, including produce of calls on contributories, realised or brought to credit, after deducting sums paid to secured creditors (other than debenture holders), and not being moneys received and spent in carrying on the business of the company :

On the first £1000, or fraction thereof	5 per cent.
On the next £1500 " "	4 "
On the next £2500 " "	3 "
On the next £5000 " "	2 "
Above £10,000 	1 "

- (3) On the amount distributed in dividend or paid to contributories, &c. . Half the above percentages.

III.—Travelling, keeping possession, legal and other reasonable expenses of the Official Receiver, the amounts disbursed.

IV.—On every payment under section 15 of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows:—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

TABLE C.

High bailiff for attending sittings of the Court, under each winding-up order, per case . . .	0	6	0
Serving every petition or subpoena or winding-up or other order (not serviceable by post) within two miles, including affidavit of service . . .	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment within two miles of Court . . .	0	10	0
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept . . .	0	4	6
(Not less than 3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced.)			
High bailiff's, or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpoena, or for any other purpose specially directed by the Court, per mile	0	0	5
His time, per day, where distance exceeds 10 miles . . .	0	4	6
His expenses, per day	0	4	6
If high bailiff of a County Court or officer of Supreme Court directed by the Court personally to travel, per mile	0	0	7
His time, per day	0	10	0
His expenses, per day	0	10	0

STATEMENTS BY LIQUIDATORS IN PENDING LIQUIDATIONS TO THE REGISTRAR OF JOINT STOCK COMPANIES.

GENERAL ORDER BY THE BOARD OF TRADE (UNDER RULE 175 OF THE COMPANIES (WINDING-UP) RULES, 1890.

It is hereby ordered by the Board of Trade as follows in regard to the matters referred to in section 15 of the Companies (Winding-up) Act, 1890, and Rules 126 and 127 of the Companies (Winding-up) Rules, 1890.

The statement of account required by sub-section 1 of section 15 of the Act and by Rule 127 to be transmitted in duplicate to the Registrar of Joint-Stock Companies shall be in the Form No. 1 annexed hereto with such variations as circumstances may require, and shall be on sheets 13 inches by 16 inches, and shall be verified by an affidavit in the Form No. 2 annexed hereto. Transmission of accounts.

The statement shall contain a detailed statement of all the liquidator's receipts and payments on account of the company, but bank transactions as between the liquidator and the bank, and payments or receipts on account of investments made by or on behalf of the liquidator, should be inserted in the columns provided for that purpose, and not in the columns for "other receipts and payments." Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments should severally be added up at the foot of each sheet, and the totals carried forward to the next sheet, without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively. Receipts and payments.

When the liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement. The trading account shall be in the Form No. 3 annexed hereto, shall be on sheets 13 inches by 16 inches, and shall be sent in duplicate. Trading account.

Petty expenses must be entered in the statement or trading account in sufficient detail to show that no estimated charges are made. Petty expenses.

Where property has been realised, the gross proceeds of sale Realisations.

must be entered under receipts in the statement, and the necessary disbursements and charges incidental to sales must be entered as payments.

Dividends, &c. Where dividends or instalments of composition are paid to creditors or a return of surplus assets is made to contributories, the total amount of each dividend or instalment of composition or payment to a contributory must be entered in the liquidator's statement as one sum, and the liquidator must forward with his statement separate accounts in duplicate, in the Forms Nos. 4 and 5 annexed hereto, showing the amount of the claim and the amount of dividend or composition, payable to each creditor or contributory, distinguishing in such list the dividends or instalments of composition paid and those remaining unclaimed. Such lists shall be on sheets 13 inches by 8 inches.

Affidavit of
no receipts
or payments.

Where a liquidator has not during the period comprised in the account received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement to the Registrar of Joint Stock Companies, forward to the Registrar an affidavit of no receipts or payments in the Form No. 2 annexed hereto.

(Signed)

M. E. HICKS-BEACH,

President of the Board of Trade.

Dated the 31st December 1890.

No. 1.
LIQUIDATOR'S STATEMENT OF ACCOUNT.
(Title.)

Nature of proceedings (whether wound up by the Court or under
the supervision of the Court, or voluntarily . . .)
Date of commencement of winding-up.

ACCOUNT OF RECEIPTS AND PAYMENTS pursuant to Section 15 of the Companies (Winding-up) Act, 1890.

Receipts.				Payments.			
Date.	Of whom received.	Nature of Receipt.	Drawn from Bank or realised from Investments.	Other Receipts.	Date.	To whom Paid.	Nature of Payment.
							Paid into Bank or Invested.
							Other Payments.

NOTE.—At the foot of the account, the liquidator should state the general description and estimated value of outstanding assets (if any), the causes which delay the termination of the winding-up, and the period within which it may probably be completed. He should also state the balance of assets as follows :—

	£	s.	d.
Balance			
Invested			
In bank			
In hand			
Total	£		

APPENDIX III.

No. 2.

AFFIDAVIT VERIFYING LIQUIDATOR'S ACCOUNT.

(Title.)

I, *G. H.*, of _____, the liquidator of the above-named company, make oath and say:

That **the account hereunto annexed marked B. contains a full and true account of my receipts and payments in the winding-up of the above-named company from the day of 189 to the day of 189 inclusive, *and that I have not, nor has any other person by my order or for my use during such period, received any moneys on account of the said company *other than and except the items mentioned and specified in the said account.*

Sworn at, &c. }

* NOTE.—If no receipts or payments, strike out the words in italics.

No. 3.

LIQUIDATOR'S TRADING ACCOUNT.

(Title.)

G. H., the liquidator of the above-named company, in account with the estate.

[illegible]

Liquidator.

(Date)

No. 4.

LIST OF DIVIDENDS OR COMPOSITION.

I hereby certify that a dividend (or composition) of
in the £ has been paid, and that the creditors whose names
are set forth below are entitled to the amounts set opposite
their respective names.

Liquidator.

189 .

Dated the day of

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.	Amount of Dividend (or Composition).	
			Paid.	Unclaimed.

No. 5.

LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES.

I hereby certify that a return of surplus assets has been
made to contributories at the rate of £ per share, and
that the contributories whose names are sets forth below are
entitled to the amounts set opposite their respective names.

Liquidator.

189 .

Dated the day of

To the Board of Trade.

Surname.	Christian Name.	No. of Shares.	Amount returned on Shares.	
			Paid.	Unclaimed.

GENERAL RULES MADE PURSUANT TO SECTION 26 OF THE COMPANIES (WINDING-UP) ACT, 1980.

PETITIONS AND ORDERS.

Attendance
before hear-
ing to show
compliance
with Rules
as to peti-
tions.

1. After a petition has been presented the petitioner shall on a day to be appointed by the Registrar, not less than two days before the day appointed for the hearing of the petition, attend before the Registrar and satisfy him that the petition has been duly advertised; that the prescribed affidavit verifying the statements therein and the affidavit of service (if any, have been duly filed, and that the provisions of the Rules as to petitions for winding-up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner, who has not prior to the hearing of the petition attended before the Registrar at the time appointed and satisfied him in manner required by this Rule.

Form of
advertis-
ement of
petition.

2. Every advertisement of a petition shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner within the time and in the manner prescribed by the next succeeding rule; and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular. Form 2 shall be used in substitution for the form of advertisement prescribed by the Companies Winding-up Rules, 1890.

Form 2.

Notice by
persons who
intend to
appear on
hearing of
petitions.

3. Every person who intends to appear on the hearing of a petition shall serve on or send by post notice in writing of his intention to the petitioner at the address stated in the advertisement of the petition. The notice shall be signed by such person or his solicitor, and shall be served, or, if sent by post, shall be posted in such time as in ordinary course of post to reach the address, not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in the Form No. 1 with such variations as circumstances may require. A person who has failed to comply with this Rule shall not without the special leave of the Court be allowed to appear on the hearing of the petition.

Form 1.

4. The petitioner shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in the Form 3. A fair copy of the list shall, on the day appointed for hearing the petition, be handed by the petitioner to the Registrar in Court prior to the hearing of the petition.

List of names and addresses of persons who appear on the petition.

5. When an order for the winding up of a company or for the appointment of the Official Receiver as provisional liquidator prior to the making of an order for the winding up of the company has been pronounced in Court, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

Notice that winding-up order has been pronounced to be given to Official Receiver.

The notice may be in Forms 4 and 5 respectively with such variations as circumstances may require.

6. It shall be the duty of the petitioner, and of all other persons who have appeared on the hearing of the petition at latest on the day following the day on which an order for the winding up of a company is pronounced in Court, to leave at the Registrar's office the petition stamped with a proper filing stamp, and the counsel's brief and other documents required for the purpose of enabling the Registrar to complete the order forthwith.

Documents for drawing-up order to be left with Registrar.

7. It shall not be necessary for the Registrar to make an appointment to settle or pass the order or to give notice to any of the parties thereto, unless in any particular case the special circumstances make an appointment or notice necessary.

No appointments for settling and passing order.

8. The costs of the solicitor to the petitioner, or of any persons whose costs of appearing on the hearing are allowed by the Court, properly incurred in carrying out these Rules shall be allowed as part of the costs of appearing on the petition.

Costs.

9. Instead of the fee of one pound on the petition, and one pound on the order, there shall be paid on the presentation of a petition a fee of two pounds to be stamped on the petition, which fee of two pounds shall cover the prescribed fee on drawing up and entering the order.

Fee on petition and order.

10. In these Rules—

Interpretation.

“Petition” means a petition “to the Court for the winding up of a company by the Court, or subject to the supervision of the Court.”

Construction and citation. 11. These Rules shall be construed as one set of Rules with the Companies Winding-up Rules, 1890. These Rules may be cited separately as the Companies Winding-up Rules (February) 1891.

Commencement. 12. These Rules shall commence and come into operation on the 16th day of March, 1891.

(Signed) HALSBURY, C.

I concur.

M. HICKS-BEACH,
President of the Board of Trade.

The 14th day of February, 1891.

FORMS.

No. 1.

NOTICE OF INTENTION TO APPEAR ON PETITION.

In the matter of the Companies Acts, 1862
to 1890,

and

In the matter of the (a)

Company.

(a) Insert
name of com-
pany.

(b)

(b) State full
name, or if a
firm, the name
of the firm.

TAKE NOTICE that *A. B.* a creditor [*or*, contributory] of the
above company intends to appear
on the hearing of the petition advertised to be heard on the
day of 189 and to support
[*or*, oppose] such petition.

[Signed] (c) [Name of person or firm.]

(c) To be
signed by the
person or his
solicitor.

To

[Address.]

No. 2.

ADVERTISEMENT OF PETITION.

In the matter of the Companies Acts, 1862
to 1890

and

In the matter of the (a)

Company.

(a) Insert
name of com-
pany.

NOTICE is hereby given that a petition for the winding up
of the above-named Company by (b) the High Court of Justice
[*or*, the County Court of] holden at
[*or*, as the case may be] was, on the day of
189, presented to the said Court by the said company [*or*]
by *A. B.* of a creditor [*or*, contributory],
of the said company [*or*, as the case may be]. And that the
said petition is directed to be heard before the Court sitting at
on the day of
189; and any creditor or contributory of the said
company desirous to support or oppose the making of an

(b) If the
winding up is
to be subject to
supervision, in-
sert instead of
"by" the
words "subject
to the super-
vision of."

No. 4.

NOTIFICATION TO OFFICIAL RECEIVER OF ORDERS PRONOUNCED
ON PETITIONS FOR WINDING UP.*(Title.)*

To the Official Receiver of the Court.

(Address.)

Orders pronounced this day by the Honourable Mr. Justice
[*or, as the case may be*] on petitions for winding up of
companies under the Companies Acts, 1862 to 1890.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.

No. 5.

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED
FOR APPOINTMENT OF OFFICIAL RECEIVER AS PROVISIONAL
LIQUIDATOR PRIOR TO WINDING-UP ORDER BEING MADE.

(Title.)

To the Official Receiver of the Court.

(Address.)

Orders pronounced this day by the Honourable Mr. Justice
[or, as the case may be] for the appointment of
the Official Receiver as provisional liquidator prior to any
Winding-up Order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.

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